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Nos. 23, 27, 41

In the Supreme Court of the United States

OCTOBER TERM, 1943

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, A CORPORATION, ET AL.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

SOUTHERN PACIFIC COMPANY, A CORPORATION, ET AL.

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, AND SOUTHERN PACIFIC COMPANY, A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE FIFTH AND NINTH CIRCUITS

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H. R. 6288, 74th Cong., 1st Sess. 78

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Lorwin and Wubnig, *Labor Relations Boards* (Brookings Institution, 1935) 74

National War Labor Board, *Principles and Rules of Procedure*, reprinted in United States Department of Labor Annual Report for 1919, p. 1273 67

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Spencer, *The National Railroad Adjustment Board* (University of Chicago Press, 1938) 64

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In the Supreme Court of the United States

October Term, 1943

No. 23

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, A CORPORATION, ET AL.

No. 27

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

SOUTHERN PACIFIC COMPANY, A CORPORATION, ET AL.

No. 41

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, AN UNINCORPORATED ASSOCIATION, AND SOUTHERN PACIFIC COMPANY, A CORPORATION

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OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fifth Circuit in No. 23 (R. 295–300) is reported at 132 F. (2d) 91. The opinion of the Circuit Court of Appeals for the Ninth Circuit in Nos. 27 and 41 (R. 792–826) is reported in 132 F. (2d) 194. The district courts rendered no opinions; their findings may be found at No. 23, R. 70–78, and in Nos. 27 and 41, R. 44–57.

JURISDICTION

The jurisdiction of this Court in these cases is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1935.

QUESTIONS PRESENTED

This Court has requested the parties to discuss the following questions:

1. Whether resort to the declaratory judgment procedure is proper under the circumstances.

2. Whether any questions of the construction of the contracts involved are governed by state or federal law.

3. What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

The other questions presented are:

4. Whether, when the craft of engineers is represented by another organization, the Railway Labor Act is violated by certain provisions in

collective bargaining agreements between the representative of the craft of firemen and a carrier which determine what persons shall be called to service in the craft of engineers or relate to the advancement of firemen to engineers' positions and the demotion of engineers to firemen's positions.

5. In No. 27, whether the Railway Labor Act is violated by a provision in the collective bargaining agreement between the representative of the firemen and the carrier which permits the firemen's organization to represent individual engineers in the handling of grievances.

STATUTE INVOLVED

The statute involved is the Railway Labor Act, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Section 151, *et seq.* Copies of the Act are attached as an appendix to this brief.

STATEMENT

No. 23 is an action by the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad against that railroad for a declaratory judgment that certain provisions of a contract between the railroad and the Brotherhood of Locomotive Firemen and Enginemen were violative of the Railway Labor Act and therefore unlawful in that they infringe upon the right of the Brotherhood of Engineers to represent the craft of engineers. Nos. 27 and 41 are a petition and

cross-petition for certiorari in an action instituted by the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company against the Southern Pacific Railroad for a similar declaratory judgment with respect to certain provisions of the collective agreement between the Brotherhood of Locomotive Firemen and Enginemen and that railroad. In each case, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen intervened as a third-party defendant. Although the contract provisions involved in the cases are not identical, Nos. 23 and 41 raise the same issue, and it seems appropriate to deal with all the questions presented in a single brief. For purposes of convenience, we shall hereafter refer to No. 23 as the *M-K-T* case, to Nos. 27 and 41 as the *Southern Pacific* case, to the Engineers' Brotherhood and the respective engineers' committees as the "Engineers" and to the Firemen's Brotherhood and the respective firemen's committees as the "Firemen".

Factual Background.—The factual background of both cases is substantially the same. Under collective bargaining agreements on most railroads, including the M-K-T and the Southern Pacific, employees are hired as firemen and immediately begin to acquire seniority as such. After a certain period, the firemen are required

to take a test to qualify them for service as engineers, and they lose their firemen's seniority and, on some roads, their jobs, if they do not pass these tests within a certain time. Vacant positions as engineers are filled from the ranks of those who have passed these qualifying tests in order of seniority.[1] When it is necessary to reduce the force of working engineers, those with the least seniority are cut off and are entitled to take positions as firemen in accordance with their firemen's seniority. The firemen with less seniority are "bumped" down the ladder of jobs, with the result that junior firemen are deprived of work and furloughed until their services are needed. When a vacancy occurs in the engineers' ranks, or when the demand for engineers increases, all move up again. (M-K-T R. 230–231, 144–145, 154–155, 282, 289; S. P. R. 151–156, 160–162, 244–246, 279, 281, 293.)

Engineers and firemen constitute different crafts within the meaning of the Railway Labor Act. On almost all roads, the engineers are represented by the Engineers Brotherhood and the firemen by the Firemen's Brotherhood. Most

[1] Some railroads have hired men directly as engineers, but this practice is dying out, except perhaps on some roads in the South, where Negroes may become firemen but are ineligible for promotion to engineers (S. P. R. 280, 236–237, 249–250, 252). The Southern Pacific still has a few hired engineers, but has not engaged any in this manner since 1920 (S. P. R. 137). The M-K-T has hired no engineers since 1916 or 1917 (M-K-T R. 152).

engineers are members of the former and most firemen of the latter. Some, however, are members of both organizations and some of neither. And some men working as engineers belong to the Firemen and some men working as firemen belong to the Engineers. M-K-T R. 167–168 213–214; S. P. R. 146, 151, 195, 197, 268–269.)

In general, engineers are assigned in order of seniority to "regular runs," both passenger and freight, then to pool freight service (which rotates irregular runs among the pool members), and then to engineers' extra boards from which they receive assignments as positions open up. If no engineer in the above categories is available for a job, the senior available qualified engineer working as a fireman is called as an "emergency engineer". (M-K-T R. 141–143, 153; S. P. R. 139, 169–170.)

The reduction and replacement of both engineers and firemen are governed by "mileage" limitations which provide that the average monthly mileage per man on the working lists will be kept within specified limits. Engineers cannot be reduced to firemen's work while the average engineer exceeds the lower mileage limit, and the engineers' list must be enlarged when the average rises above the upper limit. (S. P. R. 604–607; M-K-T R. 147.) The general object of these limitations is to spread the work by avoiding its concentration among too few men. They also protect the firemen against division of

engineers' work among too few engineers; when that happens, the senior engineers perform all of the engineers' work and are highly paid, while the junior engineers descend to the top firemen's jobs, push all firemen down the seniority ladder, and thus force the laying off of junior firemen. The engineers normally prefer high and the firemen low mileage limitations. (S. P. R. 151–153, 159–162, 291–292.)

Between 1913 and 1927, matters of interest to both engineers and firemen were handled under the Chicago Joint Agreement between the two organizations.[2] The Chicago Agreement was abrogated by the Engineers in 1927, but the provisions of the joint schedules were generally continued without change in the separate agreements made by the Brotherhoods with the carriers. (M-K-T R. 232; S. P. R. 201, 247, 259, 261.)

The Chicago Agreement expressly "conceded" the right of engineers and firemen to be represented in the handling of grievances by the organization to which they belonged, subject to "the recognized interpretation" of the organization making the particular agreement involved (S. P. R. 671). It has been the practice for an employee to be represented by the organization of which he was a member in grievance matters, even though that organization was not the designated

[2] See the Chicago Joint Agreement of May 17, 1913 (S. P. R. 669); as revised May [illegible], 1918 (S. P. R. 684); as revised May 1, 1923 (S. P. R. 701).

representative of the craft in which he was working when the grievance arose. The Firemen had customarily represented its members on grievance matters arising when the men were employed as engineers, and the same right has been accorded to the Engineers for its members while they were working as firemen. (S. P. R. 165, 205–208, 234–235, 240–241.)

In the light of this background common to both cases, we examine the facts of each case separately.

No. 23—The M-K-T case.—This case is concerned with the validity of three provisions of the Mediation Agreement made December 12, 1940, between the Firemen and the M-K-T (M-K-T R. 27–32). The railroad in 1918 had entered into a contract with the Engineers on behalf of the engineers' craft, which agreement is still in effect (M-K-T R. 22, 50). That agreement had been interpreted by the Engineers and the carrier during the ensuing years as meaning (1) that (except at Smithville, Texas) when it was necessary to call an engineer for emergency service, the senior available demoted engineer whose home terminal was at the place where the service was required or the man assigned to that particular run as fireman, if he had greater seniority as engineer, would be chosen (M-K-T R. 116–118, 141, 169–170); (2) that the regulation of the engineers' working lists was handled by the Engineers' local

chairman rather than by the management (M-K-T R. 148–149, 158–159);[3] and (3) that at Smithville, instead of calling in emergency engineers when this would otherwise have been done, emergency work would be performed by advancing the assignment of the engineers in the regular pool (M-K-T R. 119–126, 145–146, 191–192, 282–283).[4] These provisions were unsatisfactory to the Firemen, and after they had made unsuccessful complaint to the carrier,[5] and after the latter had tried to bring the two organizations together (M-K-T R. 193), the matter was submitted to the National Mediation Board for mediation (M-K-T R. 172–180). After failure of efforts to resolve the dispute in this way, a strike was authorized by the Firemen (M-K-T R. 198). The Mediation Board again undertook to mediate the

[3] By an exchange of letters in 1923 (M-K-T R. 29–31), it had been agreed that the management would handle assignments, with the cooperation of the local chairman of the organization, but in practice, the function had "drifted" into the hands of the organization (M-K-T R. 158–159).

[4] For example, if there were ten engineers assigned to the pool and one got sick, and no engineer was available on the extra list, the pool work would be divided among the remaining nine engineers in rotation without calling in an emergency engineer. The result would be additional work and compensation for the men already working as engineers, while the firemen would not move up the scale of jobs as they do when the top man is promoted to engineer (M-K-T R. 290).

[5] The carrier originally took the position that the Engineers had jurisdiction over the disputed subjects (M-K-T R. 173, 193).

controversy; it requested the Engineers to participate in the negotiations but they failed to appear (M-K-T R. 163–164). The carrier and the Firemen thereupon entered into the Mediation Agreement of December 12, 1940, the validity of which is here in issue.

The first clause of the Agreement (M-K-T R. 27) provides that

> when necessary to call a demoted engineer who is back firing to perform service as engineer, the senior available demoted engineer will be called.

The third clause and the accompanying letters (M-K-T R. 31–32) made the first clause applicable to Smithville. The effect of this was to eliminate the preference previously given to engineers of the home terminal and the special arrangement at Smithville in favor of the pool engineers (M-K-T R. 280). The second clause of the agreement provided that working lists should be regulated in the manner contemplated by an exchange of letters in March 1923; these stated that the assignments would be handled by the management, assisted by the local chairmen of the two organizations (M-K-T R. 29–31, 286). The consequence was to change the current practice whereby the list was handled by the Engineers' Committee.[6]

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[6] The practical effect of this was that the management conferred with both the Firemen and the Engineers rather than with the Engineers alone (M-K-T R. 149).

After the making of this agreement with the Firemen, the carrier gave notice to the Engineers that it was canceling previous agreements inconsistent therewith, and after unavailing conferences, the cancellation became effective (M-K-T R. 128–140, 196). The Engineers then brought this action for a declaratory judgment that the Agreement of December 12, 1940, was null and void because in violation of the Railway Labor Act, and that the Engineers should be declared to have "exclusive rights to negotiate, bargain and agree collectively with the [carrier] as to pay, rules and working conditions of locomotive engineers" (M-K-T R. 33–34).

The district court ruled that the Agreement of December 12, 1940 was lawful and that the carrier had the right to negotiate with both of the Brotherhoods, and with either if the other refused to participate, with respect to such matters as the movement of firemen and engineers back and forth from one craft to the other (M-K-T R. 69, 70–78). The Circuit Court of Appeals for the Fifth Circuit held that on such subjects, where both crafts were interested, neither organization had exclusive rights to make a complete agreement without the concurrence of the other, and that the agreement between the Firemen and the carrier was not void but was incomplete and not binding upon the Engineers, subject to termination by the carrier if the Engineers did not acquiesce in it (M-K-T R. 298–301).

Nos. 27 and 41—The Southern Pacific case.—In this case, the Engineers are attacking the validity of certain provisions of the agreement made in 1939 between the Firemen and the Southern Pacific Railroad on the ground that the Firemen have no right to contract with respect to the conditions of employment of engineers.

1. The Engineers challenge the lawfulness of Article 43, Sections 1, 2, 3, 4, and 6 of the Firemen's Agreement of 1939, which contains the mileage limitations.[7]

Inasmuch as the precise language of the Agreement is important, the sections in question are quoted here in full (S. P. R. 604–606, 608):

ARTICLE 43

DEMOTIONS AND LOST RUNS

SEC. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any firemen their junior on that seniority district under the following conditions:

First: That no reduction will be made so long as those in assigned or extra passenger

[7] Similar provisions had been incorporated in both the Engineers' and Firemen's Agreements since 1913; and since 1918 the mileage provisions in the two agreements on the Southern Pacific have been substantially the same (Pl. Ex. 7, S. P. R. 637–657). Identical provisions are contained in the Firemen's Agreement of 1929 and the Engineers' Agreement of 1931, which is still in effect (S. P. R. 653–666).

service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority.

SEC. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.

SEC. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4,800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3,800 miles per month.

SEC. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4,000 and 4,800 miles for passenger and 3,200 and 3,800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings

below these limits, regulation will be affected by requiring the regular assigned man or men to lay off when the equivalent of 4,800 miles in passenger or 3,800 miles in other regular service has been reached.

On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2,600 and 3,800 miles per month; provided that when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3,100 miles per month, engineers will be returned to the extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2,600 miles per month.

Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

NOTE.—As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118–119–120.[8]

SEC. 5. * * *

SEC. 6. In making reductions and replacing firemen upon the service lists, the same

[8] The Addendum is set forth at S. P. R. 629–632.

mileage shall apply as in the case of engineers. * * *

2. Article 37, Section 15, of the Firemen's 1939 Agreement, provides (S. P. R. 587):

> SEC. 15. A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime.

The Engineers do not assail this provision but the questions and answers which follow it; these read as follows (*ibid.*):

> Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?
>
> (b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?
>
> Answer: (a) The senior available qualified man in accordance with his seniority as engineer.
>
> (b) The senior available man.

3. Article 51, Section 1, of the Firemen's Agreement provides that (S. P. R. 616):

> SEC. 1. The right of any *engineer*, fireman, hostler or hostler helper to have the

> regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. [Italics supplied.] [9]

Decisions below.—The district court rejected all of the Engineers' contentions and entered a declaratory judgment that each of the challenged provisions of the Firemen's Agreement was lawful under the Railway Labor Act and that the Firemen had the right to represent men working as engineers on grievance matters (S. P. R. 58–59).

---

[9] An identical provision was included in the Chicago Joint Agreement of 1913 (S. P. R. 671) and in all agreements made with each organization since that time up to but not including the Engineers Agreement of 1931. See Plaintiff's Exhibit 8 (S. P. R. 660–663). The latter agreement provides, in Article 32, Section 22 (S. P. R. 452):

"SEC. 22. The General Committee of Adjustment, Brotherhood of Locomotive Engineers, will represent all locomotive engineers in the making of contracts, rates, rules, working agreement, and interpretations thereof.

"All controversies affecting locomotive engineers will be handled in accordance with the recognized interpretation of the Engineers' contract as agreed upon between the Committee of the Brotherhood of Locomotive Engineers and the Management.

"In matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively."

The Court found (Finding 11, S. P. R. 52) that the provisions of Article 43 here in issue

> were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours.

The Court also found (S. P. R. 53):

> 14. The Questions and Answers under Article 37, Section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules.

The Circuit Court of Appeals for the Ninth Circuit affirmed the district court's decision as to the Firemen's right to represent members in the handling of grievances. It directed that Finding 11, quoted above, be incorporated in the judgment as to the validity of Article 43, thereby holding the Article lawful as a condition upon the right of engineers to displace firemen, but not as otherwise regulating the craft of engineers (S. P. R. 818). This determination seemingly accepted the

Firemen's contentions. But the court then went on to state (S. P. R. 823) that this was the interpretation which the Engineers claimed,

> namely, "that Sections 2, 3, 4 and 6 of Article 43 of the Firemen's Agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections * * * [are] invalid insofar as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, * * *

The court reversed the judgment of the district court as to the question and answer appended to Article 37, Section 15. It stated that (S. P. R. 824) "the Act contemplates that the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other." Its conclusion was that these interpretations controlled the promotion of men to engineers and were therefore unlawful "insofar as they relate to entry of a fireman into the craft of engineers" (S. P. R. 826).

The Engineers have petitioned for certiorari from the judgment as to Article 51 and the right of the Firemen to handle grievances, and the Firemen have petitioned from the judgment as to Articles 43 and 37.

SUMMARY OF ARGUMENT

I

Resort to the declaratory judgment procedure in these cases was proper, inasmuch as the dispute is of a type which would warrant injunctive relief. Neither the terms nor the policy of the Railway Labor Act forbid the submission to the courts for a declaratory ruling of questions as to the validity of bargaining agreements under the Act. The jurisdiction of the Adjustment Board does not extend to such questions.

II

Since only declaratory and not injunctive relief is sought, and since in any event a suit by a majority representative to enjoin a carrier from treating with any other organization on behalf of its craft is authorized by the Railway Labor Act (*Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515) the Norris-LaGuardia Act is not applicable. Furthermore, the enforcement of the rights of the majority representative is consistent with the policy of the latter Act as well as with that of the Railway Labor Act.

III

These cases involve the validity of contracts under the Railway Labor Act and not their construction. To the extent that it is necessary to construe the contracts in order to determine their

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers; and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water; and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that

fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue

in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one if its members to act as vice chairman: *Provided, however*, That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as

provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 4 of the Railway Labor Act is amended to read as follows:

"NATIONAL MEDIATION BOARD

"SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, any such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or com-

pensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures."

SEC. 5. Section 5 of the Railway Labor Act is amended to read as follows:

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining abritrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to

appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft

or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession."

SEC. 6. Section 6 of the Railway Labor Act is amended to read as follows:

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board

may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpœnas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpœnas. In the event of the failure of any person to comply with such subpœna, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpœna.

SEC. 8.[2] The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same

[2] Section 8 as contained in Railway Labor Act, approved May 20, 1926.

district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 8.[3] If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a

[3] Section 8 as contained in Public, No. 442, amendment to Railway Labor Act, approved June 21, 1934.

ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes", approved February 13, 1925, is amended to read as follows:

"SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply."

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

TITLE II

SECTION 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

SEC. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof.

SEC. 203. The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title in the same manner and to the same extent as are the disputes covered by section 5 of title I of this Act.

SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group or carriers by air and any class or classes of its

or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

SEC. 205. When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this Act, to select and designate four representatives who shall constitute a board which shall be known as the National Air Transport Adjustment Board. Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by title I of this Act for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 3 of title I of this Act. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 3 of title I of this Act. The powers and duties prescribed and established by the provisions of section 3 of title I of this Act with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory

to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

SEC. 206. All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving any dispute arising from any cause between any common carrier by air engaged in interstate or foreign commerce or any carrier by air transporting mail for or under contract with the United States Government, and employees of such carrier or carriers, and unsettled on the date of approval of this Act, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

SEC. 207. If any provision of this title or application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 208. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

Approved, April 10, 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 23.—October Term, 1943.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, an Unincorporated Association, Petitioner,
vs.
Missouri-Kansas-Texas Railroad Company, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[November 22, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

This case involves a dispute under the Railway Labor Act concerning the authority of two railroad Brotherhoods to represent certain employees in collective bargaining with the defendant-carriers. The petitioner (hereinafter called the Engineers) is a committee of the Brotherhood of Locomotive Engineers which has been and is the duly designated bargaining representative for the craft of engineers employed by the carriers. The third-party defendant (hereinafter called the Firemen) is a committee of the Brotherhood of Locomotive Firemen and Enginemen, which has been and is the duly designated bargaining representative for the craft of firemen on the same lines. Each craft has long had an agreement with the carriers concerning rules, rates of pay, and working conditions. The agreement with the Engineers states that the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers is vested in that committee. The agreement with the Firemen contains a similar provision concerning members of that craft. Both agreements also contain rules governing the demotion of engineers to be firemen, the promotion of firemen to be engineers, and return of demoted engineers to their former work.[1] For many years the

[1] Generally speaking employees hired under collective bargaining agreements as firemen immediately begin to acquire seniority as such. After a certain period firemen are required to take an engineer's examination. Vacant positions as engineers are filled from the list of those who have passed the qualifying tests. When it is necessary to reduce the force of working engi-

two Brotherhoods had an agreement which established rules and regulations on these subjects and which provided machinery for resolving disputes which might arise between them. This agreement was cancelled in 1927. The present dispute arose since that time and relates to the calling of engineers for emergency service. In general the Engineers and the carriers had a working arrangement providing (1) that, excepting Smithville, Texas, the senior available demoted engineer whose home terminal was at the place where the service was required or the man assigned to the particular run as fireman, if he had greater seniority as engineer, would be chosen when it was necessary to call an engineer for emergency service; (2) that the regulation of the engineers' working lists was to be handled by the Engineers' local chairman, not by the management; and (3) that at Smithville, emergency work would be performed by advancing the assignment of engineers in the so-called "pool",[2] instead of calling in emergency engineers. These arrangements were not satisfactory to the Firemen. After protest to the carriers and after a failure of the Brotherhoods to resolve their dispute the matter was submitted to the National Mediation Board for mediation. The Engineers did not participate. The Firemen and the carriers entered into the Mediation Agreement of December 12, 1940, the validity of which is here challenged. The effect of that agreement was in general to eliminate the preference previously given to engineers of the home terminal and the special arrangement at Smithville in favor of the pool engineers. It also changed the practice respecting the handling of the engineers' working lists—thereafter the assignments would be handled by the management assisted by the local chairmen of the two groups. After making the agreement the carriers gave notice

neers those with the lowest seniority are dropped and they resume their positions as firemen in accordance with their seniority in that craft. As a result, firemen with a lower seniority are moved down the ladder of jobs. Thus the most junior firemen are deprived of work and furloughed until their services are needed. When a vacancy occurs in the engineers' ranks or when the work of engineers increases, all move up the ladder of jobs again.

[2] Engineers are generally assigned in order of seniority to regular runs (both passenger and freight), then to pool freight service (which rotates irregular runs among the pool members on a first in first out basis), and then to extra boards of engineers from which assignments are made as positions are available. If no engineer in those categories is available, the senior available qualified engineer working as a fireman is called as an "emergency" engineer.

to the Engineers that they were cancelling previous arrangements with that Brotherhood.

The Engineers then brought this action for a declaratory judgment (48 Stat. 955, 28 U. S. C. § 400) that the agreement of December 12, 1940, was in violation of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185, 45 U. S. C. § 151) and that the Engineers should be declared to be the sole representative of the locomotive engineers with the exclusive right to bargain for them. The carriers in their answer prayed that the court declare the respective rights of the parties. And the Firemen, though challenging the jurisdiction of the court, in the alternative asked that the agreement of December 12, 1940, be declared valid. The District Court dismissed the petition, holding that the carriers had a right to contract with either of the crafts with reference to the problems in question. The Circuit Court of Appeals held that both crafts were interested in the subject matter of the dispute, that neither craft had an exclusive right to bargain concerning the matters in issue, that the representatives of both crafts should confer and if possible agree, and that the agreement of December 12, 1940, might be terminated by the carriers if not acquiesced in by the Engineers. 132 F. 2d 91.

The case is here on a petition for certiorari which we granted because of the importance of the problems raised by the assumption of jurisdiction over such controversies by the federal courts.

The bulk of the argument here relates to the merits of the dispute. But we do not intimate an opinion concerning them. For we are of the view that the District Court was without power to resolve the controversy.

It is our view that the issues tendered by the present litigation are not justiciable—that is to say that Congress by this Act has foreclosed resort to the courts for enforcement of the claims asserted by the parties.

The history of this legislation has been traced in earlier cases coming before this Court. See *Pennsylvania R. Co.* v. *United States Railroad Labor Board*, 261 U. S. 72; *Pennsylvania Railroad System & Allied Lines Federation No. 90* v. *Pennsylvania R. Co.*, 267 U. S. 203; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & Steamship Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515. The present Act is the product

of some fifty years of evolution.[3] For many years the only sanctions under the various Congressional enactments in this field were publicity and public opinion. A conspicuous example concerns the Railroad Labor Board, constituted under the Transportation Act of 1920. It had important functions to perform. But this Court held in the *Federation No. 90* case (267 U. S. 203) that the Board's decisions were not supported by any legal sanctions. The parties to the labor controversies covered by the Act were not "in any way to be forced into compliance with the statute or with the judgments pronounced by the Labor Board, except through the effect of adverse public opinion.". *Id.*, p. 216. The 1926 Act (44 Stat. 577) made a basic change in the pattern of the railway labor legislation which had preceded.[4] Conciliatory means were adhered to; provisions for mediation and arbitration were adopted; and the use of that machinery on a voluntary basis was encouraged.[5] But Con-

[3] The first of seven statutes enacted during this period was the Arbitration Act of 1888, 25 Stat. 501. This act provided for the voluntary arbitration of disputes and authorized the President to set up investigating committees. It was superseded in 1898 by the Erdman Act (30 Stat. 424) which provided machinery for arbitration and also introduced for the first time the policy of mediation. The mediators were the chairman of the Interstate Commerce Commission and the United States Commissioner of Labor. Next came the Newlands Act of 1913 (38 Stat. 103) which established a permanent Board of Mediation and Conciliation. Under both the Erdman and Newlands acts, mediation was to be employed first, and upon failure of that the mediators were to attempt to have the parties arbitrate. In 1916 Congress passed the Adamson Act (39 Stat. 721) in settlement of a dispute over the eight-hour day. That act provided for an eight-hour day for train operators and a commission to enforce it. Upon return of the railroads to private ownership, the Esch-Cummins law was passed. See Title III of the Transportation Act of 1920, 41 Stat. 456. This act differed from the earlier legislation by providing for public representation on a newly created Railroad Labor Board, by permitting the Board to investigate all disputes of its own initiative, and by placing the primary burden of settlement of disputes on direct negotiations between the parties. In 1926 Congress passed the first Railway Labor Act (44 Stat. 577) which was amended in 1934, 48 Stat. 1185. See Alderman, The History of Federal Legislation Dealing with Machinery for Settling Disputes Concerning Wages and Working Conditions of Employees of Interstate Railroads (1938); The Railway Labor Act and the National Mediation Board (1940), pp. 7-8, 67-76; Fisher, Industrial Disputes (1940), pp. 154-86; Johnson, Government Regulation of Transportation (1938), pp. 190-206; Parmelee, The Modern Railway (1940), pp. 420-35; Spencer, The National Railroad Adjustment Board (1938) pp. 1-16; Witte, The Government in Labor Disputes (1932), pp. 238-44; Wolf, The Railroad Labor Board (1927), pp. 1-13; Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L. J. 567.

[4] The Railway Labor Act and the National Mediation Board (1940) pp. 1-8.

[5] S. Rep. No. 222, 69th Cong., 1st Sess., p. 4.

gress also supported its policy with the imposition of some rules of conduct for breach of which the courts afford a sanction. Thus Congress stated in § 2, Fourth of the 1926 Act that the choice by employees of their collective bargaining representatives should be free from the carriers' coercion and influence. That "definite statutory prohibition of conduct which would thwart the declared purpose" of the Act was held by this Court in the *Clerks* case to be enforcible in an appropriate suit. 281 U. S. 548, 568. As stated by Chief Justice Hughes in that case:

"Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme. All the proceedings looking to amicable adjustments and to agreements for arbitration of disputes, the entire policy of the Act, must depend for success on the uncoerced action of each party through its own representatives to the end that agreements satisfactory to both may be reached and the peace essential to the uninterrupted service of the instrumentalities of interstate commerce may be maintained. There is no impairment of the voluntary character of arrangements for the adjustment of disputes in the imposition of a legal obligation not to interfere with the free choice of those who are to make such adjustments. On the contrary, it is of the essence of a voluntary scheme, if it is to accomplish its purpose, that this liberty should be safeguarded. The definite prohibition which Congress inserted in the Act can not therefore be overridden in the view that Congress intended it to be ignored. As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated." 281 U. S. p. 569.

Thus what had long been a "right" of employees enforcible only by strikes and other methods of industrial warfare emerged as a "right" enforcible by judicial decree. The right of collective bargaining was no longer dependent on economic power alone.

Further protection was accorded that right by the amendments which were added in 1934. Thus § 2, Ninth provided machinery strengthening the representation provisions of the Act. H. Rep. No. 1944, 73d Cong., 2d Sess., p. 2. That new provision gave the National Mediation Board an adjudicatory function in the settlement of representation disputes. It provided for a reference to that Board of representation disputes arising among a carrier's employees. It charged the Board with

the "duty" upon the request of either party to the dispute to investigate the controversy and to certify the name or names of the designated and authorized representatives of the employees. And Congress added the command that "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act." It was that specific command for disobedience of which this Court held in the *Virginian Ry. Co.* case (300 U. S. 515) that courts would provide a remedy. That result was reached over the objection that § 2, Ninth stated a policy but created no rights or duties enforcible by judicial decree. This Court reviewed the history of § 2, Ninth—its purpose and meaning. It concluded that the provision in question was "mandatory in form and capable of enforcement by judicial process." *Id.*, p. 545. It observed that if the provision were construed as being precatory only, its addition to the Act was "purposeless"; that only a requirement of "some affirmative act on the part of the employer" would add to the 1926 Act. *Id.*, p. 547. The Court accordingly concluded that the command of § 2, Ninth could not have been intended to be without legal sanction.

Other similar statutory commands or prohibitions were provided by Congress. The right of the majority of a craft or class to determine who shall be the craft or class representative (§ 2, Fourth); the right of the employees to designate as their representative one who is not an employee of the carrier (§ 2, Third); the prohibition against "yellow dog" contracts (§ 2, Fifth) are illustrative.[6] Moreover, administrative machinery was provided for the adjudication of certain controversies. Congress established the National Railroad Adjustment Board for the settlement of specific types of disputes or grievances between employees and the carrier. § 3. And Congress gave the courts jurisdiction to entertain suits based on the awards of the Adjustment Board. § 3, First (p). That feature of the Act, as well as § 2, Ninth which placed on the Mediation Board definite adjudicatory functions, transferred certain segments of railway labor problems from the realm of conciliation and mediation to tribunals of the law. The new administrative machinery plus the statutory commands and prohibitions marked a great advance in supplementing nego-

[6] Criminal penalties were added by § 2, Tenth for the wilful violation of certain provisions of the Act including the three just mentioned.

tiation and self-help with specific legal sanctions in enforcement of the Congressional policy.

But it is apparent on the face of the Act that while Congress dealt with this subject comprehensively; it left the solution of only some of those problems to the courts or to administrative agencies. It entrusted large segments of this field to the voluntary processes of conciliation, mediation, and arbitration. Thus by § 5, First, Congress provided that either party to a dispute might invoke the services of the Mediation Board in a "dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference" and any other "dispute not referable" to the Adjustment Board and "not adjusted in conference between the parties or where conferences are refused."[7] Beyond the mediation machinery furnished by the Board lies arbitration. § 5, First and Third, § 7. In case both fail there is the Emergency Board which may be established by the President under § 10. In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.

That history has a special claim here. It must be kept in mind in analyzing a bill of complaint which, like the present one, seeks to state a cause of action under the Railway Labor Act and asks that judicial power be exerted in enforcement of an obligation which it is claimed Congress has created.

The Engineers assert that the carriers had no right under the Act to negotiate with the Firemen on the subject of emer-

[7] The Mediation Board also has power of interpretation of mediation agreements. § 5, Second. It likewise has duties with respect to the arbitration of disputes. See § 5, Third. Mediation is the Board's "most important task". Eighth Annual Report, National Mediation Board (1942) p. 4.

gency engineers and that the Mediation Agreement of December 12, 1940, is therefore void. They rely on § 2, Fourth of the Act and on § 2, First and Ninth.[8] Sec. 2, Fourth states that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing." But that great right, which Congress in 1926 at last supported with legal sanctions, is not challenged here. The Engineers and the Firemen are the collective bargaining agents for their respective crafts and are acknowledged as such. Their authority so to act is not challenged. Nor is it apparent how the majority rule provision of § 2, Fourth is involved here. It states that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." But concededly the Engineers represent a majority of the craft of engineers and the Firemen a majority of the firemen's craft. The principle of majority representation is not challenged. Nor does § 2, Second make justiciable what otherwise is not. It provides that "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." As we have already pointed out, § 2, Ninth, after providing for a certification by the Mediation Board of the particular craft or class representative, states that "the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act." That command of § 2, Ninth was enforced in the *Virginian Ry. Co.* case. But § 2, Second, like § 2, First,[9]

[8] Respondents in support of their prayers for declaratory relief rely not only on the implications from these and other sections of the Act but also on the proviso clause of § 1, Fifth to the effect "That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

[9] Sec. 2, First provides: "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

merely states the policy which those other provisions buttress with more particularized commands.

It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. It involves a jurisdictional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have joint authority. In the *Clerks'* case and in the *Virginian Ry. Co.* case the Court was asked to enforce statutory commands which were explicit and unequivocal. But the situation here is different. Congress did not attempt to make any codification of rules governing these jurisdictional controversies. It did not undertake a statement of the various principles of agency which were to govern the solution of disputes arising from an overlapping of the interests of two or more crafts. It established the general principles of collective bargaining and applied a command or prohibition enforcible by judicial decree to only some of its phases. The contention, however, is that the rule which Congress intended to govern can be found from the implications of the Act. Thus it is argued that the reasons which support the holding in the *Virginian Ry. Co.* case that the right of majority craft representation is exclusive also suggest that Congress intended to write into the Railway Labor Act a restriction on the rules and working conditions concerning which the craft has the right to contract. It is pointed out that if the jurisdiction of a craft within which the exclusive right may be exercised is not limited, then disputes between unions may defeat the express purposes of the Act. In that connection reference is made to the statement of this Court in the *Virginian Ry. Co.* case (300 U. S. p. 548) that the Act imposes upon the carrier "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other." That expresses the basic philosophy of § 2, Ninth. But that decision does not imply, as is argued here, that every representation problem arising under the Act presents a justiciable controversy. It does not suggest that the respective domains for two or more overlapping crafts should be litigated in the federal district courts.

It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solu-

tion to the courts. As we have already pointed out, Congress left the present problems far back in the penumbra of those few principles which it codified. Moreover, it selected different machinery for their solution. Congress did not leave the problem of inter-union disputes untouched. It is clear from the legislative history of § 2, Ninth that it was designed not only to help free the unions from the influence, coercion and control of the carriers but also to resolve a wide range of jurisdictional disputes between unions or between groups of employees.[10] H. Rep. No. 1944, *supra*, p. 2; S. Rep. No. 1065, 73d Cong., 2d Sess., p. 3. However wide may be the range of jurisdictional disputes embraced within § 2, Ninth,[11] Congress did not select the courts to resolve them. To the contrary, it fashioned an administrative remedy and left that group of disputes to the National Mediation Board. If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive.[12] If a narrower view of § 2, Ninth is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. Rather the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else it left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability.

In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford

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[10] This is made clear by Commissioner Eastman, the draftsman of the 1934 amendments, in his testimony at the hearings. See Hearings, Committee on Interstate and Foreign Commerce, House of Representatives, 73d Cong., 2d Sess., on H. R. 7650, pp. 39-41, 45, 57-58, 59.

[11] It is apparently the view of the National Mediation Board that § 2, Ninth was designed to cover only those disputes entailing an election by employees of their representatives. See Brotherhood of Railroad Trainmen v. National Mediation Board, 135 F. 2d 780, 782. In an election case the Board may have to make a preliminary determination as to the eligibility of voters involving the type of problem presented here. See Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F. 2d 757, dealing with the question whether brakemen having seniority as conductors could vote in the conductors' election.

[12] Whether judicial power may ever be exerted to require the Mediation Board to exercise the "duty" imposed upon it under § 2, Ninth and, if so, the type or types of situations in which it may be invoked present questions not involved here.

a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration. See H. Rep. No. 1944, 73d Cong., 2d Sess., p. 2. Courts should not rush in where Congress has not chosen to tread.

We are here concerned solely with legal rights under this federal Act which are enforcible by courts. For unless such a right is found it is apparent that this is not a suit or proceeding "arising under any law regulating commerce" over which the District Court had original jurisdiction by reason of § 24 (8) of the Judicial Code, 28 U. S. C. § 41 (8). Cf. *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 483; *Gully* v. *First Nat. Bank*, 299 U. S. 109; *Peyton* v. *Railway Express Agency*, 316 U. S. 350, 352. When a court has jurisdiction it has of course "authority to decide the case either way." *The Fair* v. *Kohler Die Co.*, 228 U. S. 22, 25. But in this case no declaratory decree should have been entered for the benefit of any of the parties. Any decision on the merits would involve the granting of judicial remedies which Congress chose not to confer.

Reversed.

Mr. Justice JACKSON concurs in the result.

Mr. Justice ROBERTS and Mr. Justice REED are of the view that the Court should entertain jurisdiction of the present controversy for the reasons set out in the dissent in No. 48, *Switchmen's Union of North America, etc.* v. *National Mediation Board*, decided today.

validity the question of construction is ancillary to that of the application of the federal statute and accordingly should be regarded as governed by federal law. In any event, whether federal or state law applies, the decision should be the same.

IV

A. Although the representative of the engineers' craft alone has the right to bargain with respect to rates of pay, rules and working conditions for engineers, the representative of the firemen has the right to bargain with respect to conditions upon which the men may enter and remain in firing service. If the firemen are willing to enter into an agreement which permits demoted engineers to exercise their seniority as firemen, they should be able to protect the interests of the other firemen by imposing conditions upon the engineers' right to exercise that privilege, even if the conditions relate to the terms of employment of engineers.

B. 1. The provisions of the Firemen's contract in the *M-K-T* case regulate the order in which men are to be called into service as engineers and the manner of regulating engineers' working lists. This would seem to be beyond the power of the representative of the firemen's craft and therefore unlawful. The same is true of the Questions and Answers appended to Article 37, Section 15 of the Firemen's Agreement in the *Southern Pacific* case.

2. Section 1 of Article 43 of the Firemen's Agreement in the *Southern Pacific* case establishes conditions upon which the firemen will permit engineers to displace firemen, and is concededly valid. Sections 2, 3 and 4, though not expressed in the language of condition, deal with the same subjects, and can reasonably be construed, as they have been by the parties and by the courts below, as having been intended by the parties to be conditional. So construed they would appear to be valid. The Addendum to Article 43 is valid because it constitutes an agreement to which the representative of the engineers' craft is also a party.

V

The Firemen's agreement in the *Southern Pacific* case permits the Firemen to represent engineers who are members of the firemen's organization in the handling of grievances. We think this provision valid, if interpreted so as not to relieve the carrier of its obligation to confer with a representative of the engineers' craft on any matter relating to the interpretation or application of the Engineers' agreement. Any individual or minority group may present grievances through whomever they choose, but without prejudice to the right of the majority representative also to be consulted by the carrier. The provisions of the Act, read as a whole, are ambiguous on this point but they can most reasonably be reconciled on

this basis. The legislative and historical background of the majority rule provisions of the Act support the view that the statute does not give the majority representative the exclusive right to present grievances.

ARGUMENT

I

Resort to the Declaratory Judgment Procedure Was Proper

The Court has requested the parties to discuss the question "whether resort to the declaratory judgment procedure was proper under the circumstances." We believe that the issuance of a declaratory judgment was appropriate in these cases.

We think it clear from the statement of facts that there is a controversy between the parties. Under *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, the Engineers could have sued to enjoin the carriers from bargaining with any other organization with respect to working conditions for the engineers craft. A dispute of a type to warrant injunctive relief is a controversy in the constitutional sense and within the meaning of the Declaratory Judgment Act.[10]

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[10] *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U. S. 249, 261–264. Presumably injunctive relief was not sought here in order to avoid the question raised by this Court as to the applicability of the Norris-LaGuardia Act. See p. 27, *infra*.

In the *Southern Pacific* case, the challenged provisions of Article 43 of the Firemen's Agreement (S. P. R. 604–608) are identical with provisions of the Engineers' Agreement (Article 32, Section 6, S. P. R. 435–439). The controversy does not relate, however, to the substance of the agreement but to the Firemen's right to make it. The right to bargain exclusively as the representative of a craft is itself of value and entitled to legal protection (*Texas and New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry Company* v. *System Federation No. 40*, 300 U. S. 515), without regard for whether the terms of the contract made by the legal representative will differ from those made by anyone else. Accordingly, the court below properly held (S. P. R. 815–817) that the partial identity of the Engineers' and Firemen's contracts did not preclude the existence of an actual controversy within the meaning of the Constitution and the Declaratory Judgment Act.

Nothing in the Railway Labor Act forbids the granting of declaratory relief. Disputes as to the validity of railway labor agreements, as distinct from questions as to their interpretation or application, do not fall within the jurisdiction of the National Railroad Adjustment Board,[11] or any other administrative body. Moreover, the controversy is in substance one between labor organ-

[11] Railway Labor Act, Section 3, First (i) (45 U. S. C., Section 153, First (i)).

izations, rather than between a carrier and its employees, and the Adjustment Board is not established or organized to handle that kind of case.[12] Furthermore, even if the case were subject to that Board's jurisdiction, the Engineers had a right to bring their action in the courts without first going to the Board. *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, holds that the Board's jurisdiction is not exclusive, and *Washington Terminal Co.* v. *Boswell*, 124 F. (2d) 235 (App. D. C.), affirmed by an equally divided court, June 14, 1943 (No. 28, 1942 Term), indicates only that an independent suit for a declaratory judgment may not be instituted after a case has been taken to and decided by the Board. None of the considerations which led to the denial of declaratory relief in the *Washington Terminal* case exists here.[13]

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[12] Each division of the Board is composed of an equal number of carrier and labor members in order that each side of a dispute will have equal representation (Railway Labor Act, Section 3, First (a) (h) (45 U. S. C., Section 153, First (a) (h)).

[13] The opinion of Mr. Justice Rutledge, speaking for the Court of Appeals, in the *Washington Terminal* case, shows that the *Moore* case and the *Washington Terminal* decision are entirely compatible (124 F. (2d) at 238, 243). At this Court's request, the issue determined in the *Moore* case was reargued in the *Washington Terminal* case. We assume that the affirmance by equal division in the latter case has not impaired the authority of the former. Our views on the right of a party to resort to the courts *before* submitting a controversy to the Adjustment Board are set forth at pp. 35–49 of the "Brief for the United States as *Amicus Curiae*" filed in the *Washington Terminal* case.

Accordingly, we find no jurisdictional barrier to the issuance of declaratory judgments in these cases. There still remains the possibility that declaratory relief should be denied in the exercise of the Court's discretion. In *Great Lakes Dredge & Dock Co.* v. *Huffman,* No. 849, 1942 Term, decided May 24, 1943, this Court held that the substantive considerations of policy which guide courts of equity are applicable to suits for declaratory judgments as well as to suits for injunctions.

The granting of declaratory relief in cases involving the validity of contractual obligations is not barred by any principle of equity (cf. *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227) and is entirely consistent with the policy of the Railway Labor Act. The object of that statute is the peaceful and orderly settlement of labor disputes,[14] and Congress sought to achieve that end by guaranteeing employees "freedom of association"[15] and "the right to bargain collectively through representatives of their own choosing,"[16] a right which carries as a necessary concomitant the right of the representative chosen by the majority to bargain for the entire craft.[17] This

[14] Section 2 (45 U. S. C., Section 151a); see *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen,* 318 U. S. 1, 5–7.

[15] Section 2 (45 U. S. C., Section 151a).

[16] Section 2, Fourth (45 U. S. C., Section 152, Fourth).

[17] Section 2, Fourth and Ninth (45 U. S. C. 152, Fourth and Ninth).

goal can best be attained if disputes as to the lawfulness of provisions in agreements between carriers and labor organizations not representing the majority of the craft can be resolved by peaceful means rather than through economic force. Resort to the courts clearly comes within the former.

The policy of the Norris-LaGuardia Act [18] calls for no different conclusion. That statute also was designated to assist the employee in obtaining full "freedom of association" and the right to designate "representatives of his own choosing," free from employer interference.[19] Thus the policy of the Norris-LaGuardia Act as well as that of the Railway Labor Act will be aided if the representative selected by the majority of a craft can sue for a declaration invalidating agreements applicable to the same craft made between an employer and another organization. Cf. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. at 563.

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[18] In Point II we shall show that the Norris-LaGuardia Act does not in terms apply to these cases.

[19] Section 2, 47 Stat. 70 (29 U. S. C., Section 102). The senate Committee Report on the Norris-LaGuardia Act (S. Rep. No. 163, 72d Cong., 2d Sess., pp. 11, 13) specifically declares that the policy of that Act is to protect the rights guaranteed by the Railway Labor Act and enforced by this Court in *Texas and New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

II

The Norris-LaGuardia Act Does Not Prevent the Granting of Declaratory Relief in These Cases

The Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C., Section 101 *et seq.*) regulates the granting only of injunctions and restraining orders. No such relief is sought in these cases. Complainants request the issuance of declaratory judgments rather than injunctions. Accordingly, the Norris-LaGuardia Act is not applicable.

Furthermore, this Court has held that the Railway Labor Act authorizes a labor organization representing a craft to sue to enjoin a carrier from treating with any other organization on behalf of the members of that craft. The Court specifically declared in the *Virginian Railway* case, 300 U. S. at 563, that the provisions of the Railway Labor Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Thus, even if this were a suit for injunctive relief, the Norris-LaGuardia Act would not stand in the way.

That the policy of the Norris-LaGuardia Act is not contravened by the granting of declaratory relief in this type of case has been shown in Point I, *supra*, 26.[20]

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[20] The effect of the Norris-LaGuardia Act on proceedings under the Railway Labor Act is discussed at greater length in Point I of the Government's brief in *Switchmen's Union v. National Mediation Board*, No. 48.

III

The Question Whether Construction of the Contracts is Governed by State or Federal Law

The Court has requested the parties to discuss "whether any questions of the construction of the contracts involved are governed by state or federal law."

In each of these cases the Engineers are seeking to have certain provisions of the contract between the carrier and the Firemen declared in violation of the Railway Labor Act. The cases thus involve the validity of the contracts under the Act and not their construction. Undoubtedly the issue as to the application of the Act to the contracts raises only a question of federal law.

In the *Southern Pacific* case, however, both the district court and the circuit court of appeals found it necessary to interpret the challenged provisions of the contract before determining their validity. This would appear to raise the only question of contract construction in these cases, and the precise issue to be determined is whether in this setting the contracts are to be governed by state or federal law.

Nothing in the Railway Labor Act determines what provisions as to rates of pay, rules, and working conditions, shall be included in labor agreements. These are left for the parties to decide. Cf. *Terminal Railroad Association of St.*

Louis v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6. The Act does, however, establish machinery to become operative when the parties cannot agree. When the parties have entered into a contract but are in dispute as to its interpretation or application, the controversy may be submitted either to the National Railroad Adjustment Board or to the courts. The awards of the Adjustment Board and the decisions of the federal courts in actions to enforce such awards may be said to constitute a body of federal law as to the interpretation of such agreements.

Although the Act does not declare that the law, as authoritatively determined in such cases, shall be uniform and controlling in all courts, both state and federal, any other result would produce the very friction and disharmony which the Act was designed to avert. Congress certainly would not have intended that after this Court, for example, had interpreted a railway labor agreement in a certain way in a proceeding brought under the Act to enforce an Adjustment Board award, the courts of the various states through which the railroad passed should be free to construe the agreement differently.[21] Even in the absence of any such controlling decision, since

[21] This would not mean that the awards of the Adjustment Board itself would be conclusive upon the state courts, since the Board's decisions do not necessarily contain the authoritative federal pronouncement on a point.

many of the agreements are effective in a number of states, there would be great practical advantages if all courts were required to look to a single body of authority in passing upon such questions.[22]

We do not regard as necessarily inconsistent with the view that federal law should be applicable either the decision in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, that a state's interpretation of its own statute of limitations is controlling, or the line of cases in the lower federal courts holding that actions based upon railroad labor agreements do not arise "under"[23] the Railway Labor Act for purposes of federal jurisdiction.[24] A case may raise a question of federal law and yet not "arise under" the laws or Constitution within the strict meaning of the federal jurisdictional statute. Compare *Louisville & Nashville R. Co.* v. *Mottley*, 211 U. S. 149, with 219 U. S. 467. As the cases under the Federal Employers Liability Act and the Fair Labor Standards Act cases demonstrate, state courts may have juris-

[22] If state law governed, there might often be questions as to the law of which state was applicable. Thus a railroad labor agreement might be made in Chicago for a railroad whose headquarters were in California and which operated in ten or twelve far western states.

[23] See 28 U. S. C., Section 41 (1) (8).

[24] See *Malone* v. *Gardner*, 62 F. (2d) 15 (C. C. A. 4); *Burke* v. *Union Pacific Railroad Co.*, 129 F. (2d) 844 (C. C. A. 10); *Harrison* v. *Pullman Co.*, 68 F. (2d) 826 (C. C. A. 8); *Swartz* v. *South Buffalo Ry. Co.*, 44 F. Supp. 447 (N. D. N. Y.); *McDermott* v. *New York Central Railroad Co.*, 32 F. Supp. 873 (S. D. N. Y.).

diction over particular types of cases and still be bound to apply federal law. *Jenkins* v. *Kurn*, 313 U. S. 256; *Pedersen* v. *Fitzgerald Construction Co.*, 318 U. S. 740.

The Court is not called upon here, however, to determine this general question. The cases do not present the bald issue whether railway labor agreements should be construed in accordance with state or federal law. For the interpretation of the contract in the *Southern Pacific* case is ancillary to the determination as to its validity under a federal statute. As will appear from the discussion on the merits, *infra*, p. 50, the construction of the provisions involved here is largely dominated by the principle that contracts should, if possible, be interpreted in a manner which will make them lawful and operative. Thus, the question of the application of the Railway Labor Act to these contracts is intertwined with the question of construction.

This Court has held in other connections that even though the construction of a contract is a matter of state law, when the validity of a state statute claimed to impair the contract's obligation is involved, "the existence of the contract and the nature and extent of its obligation become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a state court." *Irving Trust Co.* v. *Day*, 314 U. S. 556, 561, and cases cited. There is even more reason for per-

mitting the federal courts to determine the "nature and extent" of a contract obligation when the case involves the validity of the contract itself under a federal statute. To permit the issues of construction and validity to be decided by separate tribunals is possible but not feasible in such circumstances, for the validity of each of the possible interpretations of the contract is in itself an important element in deciding which should be accepted.

In *Standard Oil Co.* v. *Johnson,* 316 U. S. 481, the Court held that it had authority to determine as a federal question even the meaning of a state statute when this was not "based purely on local law" but was controlled by regulations governed by federal law. And in *Sola Electric Co.* v. *Jefferson Electric Co.,* 317 U. S. 173, 176, the Court recognized that the doctrine of *Erie R. Co.* v. *Tompkins,* 304 U. S. 64,

> is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law. *Royal Indemnity Co.* v. *United States,* 313 U. S. 289, 296; *Prudence Corp.* v. *Geist,* 316 U. S. 89, 95; *Board of Comm'rs* v. *United States,* 308 U. S. 343, 349–350; cf. *O'Brien* v. *Western Union Telegraph Co.,* 113 F. 2d 539, 541. When a federal statute condemns an act as unlaw-

> ful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted.

We think that these principles should be applied to the cases at bar, inasmuch as the question of interpretation is reached only because of its relationship to the basic issue as to the application of the federal statute to the contracts. The questions are interrelated and both should be regarded in these circumstances as governed by federal law.

In any event, whichever law applies, the results would be the same. There is no difference between state and federal rules in respect of the fundamental principles governing the construction of contracts. Both state and federal courts accept the rule that a contract should be given the interpretation intended by the parties,[25] and the principle that if the language permits, a contract must receive the interpretation which will make it lawful, operative, and capable of being carried into effect, if this can be done without violating the intention of the parties.[26] The

[25] See 17 C. J. S. 689, collecting cases.

[26] See 17 C. J. S. 735–738; Restatement of Contracts, sec. 236; Williston on *Contracts* (1920 ed.), sec. 620; Calif. Civil Code (Deering, 1937), sec. 1636; *Great Northern Railway* v. *Delmar Co.*, 283 U. S. 686, 691; *Davidson* v. *Kessler*, 10 Cal. App. (2d) 89 (1935). The agreement between the Southern Pacific and the Firemen involved in the *Southern Pacific* case was made in San Francisco (S. P. R. 632).

question of contract interpretation would turn upon the application of these rules to the language of these contracts, and, in the absence of controlling cases in point, it would seem to be immaterial whether state or federal law is applied.[27]

IV

The Validity of Provisions in the Firemen's Contracts Relating to the Promotion and Demotion of Engineers

A. General Principles

The *Virginian Ry.* case (300 U. S. 515, 548–549) holds that under the Railway Labor Act a carrier must bargain collectively[28] with the organization selected by the majority of the craft as the exclusive representative of that craft. The Court there sustained the granting of an injunction to restrain a carrier from bargaining with anyone but the majority organization for the crafts involved.

This means that the representative of the engineers' craft alone is entitled to bargain with

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[27] See *Earle* v. *Illinois Central R. Co.*, 167 S. W. (2d) 15, 28 (Tenn. App., 1942). We have been able to find no cases involving the interpretation of similar contract provisions in the federal courts or in the courts of the states through which the Southern Pacific operates.

[28] The duty to bargain collectively with respect to rates of pay, rules and working conditions is to be distinguished from the handling of grievances. See Point V, *infra*, pp. 54–79.

respect to rates of pay, rules and working conditions for engineers. Similarly, the representative of the firemen's craft has the sole right to enter into bargaining agreements on behalf of the firemen.

Although the principle seems clear enough, its application where the work of the two crafts is so interrelated as here is quite difficult. To take an example, the Engineers, as the representative of the engineers' craft, undoubtedly may bargain with respect to the terms on which a man working as an engineer shall be taken out of service when employment is reduced. The Firemen have the equivalent right to bargain with respect to the terms upon which men will enter into service as firemen. In practice, however, under the agreements prevailing between both organizations and the carrier, men demoted from the engineers' craft simultaneously enter the firemen's.

All parties recognize the practical necessity for this arrangement. If men to be promoted from the senior positions as firemen to junior jobs as engineers could not regain their positions as firemen when the engineers' jobs were not available to them, they might not be willing to be promoted. For steady work in the highest paying firemen's positions is preferable to sporadic and temporary assignments as an engineer (S. P. R. 185–186). The alternative would be for the carrier to hire

engineers independently of the firemen. This would be unsatisfactory to both crafts, as well as to the carrier. It would obviously prejudice the engineers, since they would be thrown out of work instead of returned to senior firemen's jobs when engineers' employment was reduced (S. P. R. 236–238). It would deprive firemen of their present right to advance to the more desirable engineers' service (M-K-T R. 284) without losing the guarantee of continuous employment resulting from long seniority as firemen. And it is clearly to the carrier's advantage to have its firemen trained and available as engineers, and not to be required to maintain a completely separate force of engineers (S. P. R. 245).

It is plain, furthermore, that the firemen have an economic interest in the conditions of employment of engineers. This does not result merely from the fact that at some time in the future the firemen will become engineers, although the interrelationship of the crafts is emphasized by the continuous movement of men back and forth between them. The plan for using the pool engineers to make emergency runs when extra engineers are not available at Smithville on the M-K-T prevents a fireman from being promoted to engineer—and thereby prevents an additional junior fireman from being put to work. (M-K-T R. 283.) And if the engineers establish high mileage limitations, fewer men will work as engineers, more engineers will

drop back to firing, and more junior firemen will be let out of service.

Several methods of applying the majority rule principle to crafts with common interests and interacting rules have been suggested. It has been proposed:

1. That in view of the movement of firemen into and out of the engineers' craft and the general interest of firemen in engineers' terms of employment, the Firemen have a right to bargain with the carrier as to all conditions of employment of engineers. The Firemen have disclaimed this extreme position (Firemen's M-K-T C. C. A. Br., pp. 27–28).

2. That the Firemen, as well as the Engineers, have a right to bargain as to all matters in which the firemen have an immediate economic interest. This theory that the two representatives have an overlapping jurisdiction would appear to be the Firemen's first position; it was accepted by both district courts and by the Circuit Court of Appeals for the Fifth Circuit in the *M-K-T* case. The latter court held that in this field an agreement by the carrier with the representative of either craft alone would be incomplete unless the representative of the other assented to it.

3. That the Firemen may not bargain as to any term of employment for engineers, but that they may fix the conditions upon which an engineer may reenter and continue in firing service, even

though these conditions may relate to the terms of employment of engineers. This would appear to be the rule adopted in the decision of the Ninth Circuit in the *Southern Pacific* case (S. P. R. 817–824).[29]

4. That the Engineers have the exclusive right to bargain with respect to engineers' terms of employment, and that the Firemen have no right to enter this field either directly or by the attachment of conditions to the rights of engineers to enter firing service. This is the Engineers' contention.

We do not believe that either of the first two of the above positions can be squared with the statutory requirement that a carrier treat only with the representative chosen by the majority of the craft with respect to rules and working conditions in that craft. Neither the general interest of the firemen in the conditions of employment for engineers nor the direct impact of some of the Engineers' rules upon firemen's work appears sufficient to deprive the men actually working as engineers of the exclusive right to bargain for themselves through their selected representative

[29] Whether the Ninth Circuit has adopted this position is not entirely clear (see R. 823–824). Although the Firemen presented the argument to that court in the *Southern Pacific* case, the court stated that it was also adopting the interpretation claimed by the Engineers (R. 823). The Firemen, not the Engineers, have petitioned for certiorari from this portion of the judgment (No. 41), and both the Petition and the Engineers' Brief in Opposition seem to assume that the court below did not sustain the validity of conditions which had the effect of governing the operation of engineers.

as to their own working conditions. We agree with the Engineers that the ebb and flow of men between the crafts does not decrease the Engineers' right to represent in collective bargaining men in engineers service, and that there is no overlapping of jurisdiction whenever the firemen have an economic interest in the rules governing engineers' activities.

The Firemen, however, have the right to bargain with respect to the terms upon which men may enter or remain in firing service. The Firemen and the carrier are not required to permit the demoted engineers to return to firing. If they decide to grant the engineers that privilege, we do not think that the Act forbids them to protect the interests of the other firemen by appropriately conditioning its exercise. They are still bargaining with respect to firemen's working conditions when they provide, for example, that a demoted engineer may return to firing service only if engineers are not demoted until their mileage goes below a prescribed minimum and if the demoted engineers will be taken back into engineers service when the mileage of the remaining engineers reaches a specified higher level. And although the Firemen could not, in our view, directly seek to prescribe the order in which men should be called to work as engineers,[30] we think it competent for them to

[30] The Firemen might bargain with respect to the order in which men must cease firing, but could not contract as to the order in which they must be taken into service as engineers.

contract that demoted engineers may avail themselves of their seniority as firemen only on condition that they be called back to engineers' service in a certain order when openings are available.

In each of the illustrations given, the conditions imposed upon the right to work as firemen are designed to safeguard the rights of other firemen and thus are a legitimate subject of bargaining by the firemen's representative. Our position as to the right of the Firemen to enter into agreements which grant engineers conditional rights as firemen would not permit the use of the condition as a method of controlling engineers' terms of employment which do not immediately affect the economic interest of the firemen.

We recognize, of course, that if the Firemen may condition the right of engineers to work as firemen in such a way as to protect their own economic interests, the practical effect may be substantially the same [n] as if their jurisdiction overlapped that of the Engineers. But this results from the fact that the Engineers and the carrier choose not to abandon the system whereby an engineer preserves his valuable fireman's seniority and the right to reenter the firemen's craft at the top whenever the engineers' working force is reduced. The engineers could escape from any conditions imposed by the Firemen by giving up that

[n] This assumes that the Firemen's agreements are or will be drafted so as to fit in which the theory of conditions discussed above.

right, which is derived from the Firemen's agreement. But as long as they retain it, they subject themselves to the necessity of harmonizing their views with those of the firemen on matters which are of concern to both crafts.

In such circumstances the desirability of a joint agreement or of uniform provisions in the Engineers' and Firemen's schedules is obvious (S. P. R. 209–228, 259–260). If the two organizations are unable to agree, each may enter into a separate contract with the carrier with different provisions to the extent that the carrier deems that to be workable.[32] If the carrier should find, as well it might, that it could not in practice prescribe rules for engineers different from the conditions applicable to the reentrance of engineers into firing service, it could insist on uniformity in such provisions, and if the two organizations would not agree, could enter into a valid agreement with one (or with neither) and prescribe the conditions for the other craft (or for both), as in any case where an employer and the bargaining representative are unable to agree.

B. THE APPLICATION OF THE ABOVE PRINCIPLES TO THE CONTRACTS INVOLVED HERE

Our conclusion from the above analysis of the applicable principles is that the Engineers have the exclusive right to contract with respect to the

[32] The Addendum to Article 43 in the Southern Pacific agreement makes specific provision for the situation in which the engineers and the firemen have different mileage limitations (S. P. R. 629–632).

rules and working conditions of engineers, including the terms under which men enter into and leave engine service, that the Firemen have the independent right to determine the conditions upon which men enter into, remain in or leave firing service, and that these conditions may relate to the terms of the employment of engineers insofar as they directly affect the firemen. We will now seek to apply these principles to the provisions of the contracts involved in these cases.

1. The M-T-K Case

a. *The First and Third Paragraphs of the December 12, 1940 Agreement.* Before the challenged Agreement made by the Firemen on December 12, 1940 (M-K-T R. 27), the agreement between the Engineers and the M-K-T provided that when the use of emergency engineers became necessary, the senior available man having his home terminal in the place where the service was to begin should be employed, except where the fireman assigned to the run had greater seniority as an engineer (M-K-T R. 116–118). At Smithville, by special agreement between the Engineers and the carrier, the regular pool engineers were to be used for emergency service (M-K-T R. 119–126). The contract between the carrier and the Firemen provided, in lieu of both of the above arrangements, that (M-K-T R. 27)

> (1) Effective February 1, 1941, it is agreed when necessary to call a demoted engineer who is back firing to perform

service as engineer, the senior available demoted engineer will be called.[33]

The effect of this was to eliminate the advantage given men at their home terminal generally and that given members of the engineers' pool at Smithville.

This paragraph of the 1940 Agreement regulates the order in which men are called to service as engineers. It does not merely determine the order in which they shall stop working as firemen. This appears clearly from the effect of the new rule upon the practice in the Smithville district. The rule previously in effect there did not even pertain to demoted engineers working as firemen; it provided for spreading the work in case of emergency among the pool engineers without recourse to such demoted engineers. This is a subject clearly within the exclusive jurisdiction of the representative of the Engineers. For the firemen's representative to compel the Engineers to use demoted engineers instead of rotating the en-

[33] The third paragraph of the Agreement stated that the question as to Smithville would be disposed of by exchange of letters, and in a letter of the same date, the carrier agreed:

* * * "steps will be taken to adjust the complaint with reference to handling of demoted engineers who are back firing at Smithville to conform to Item 1 of the Mediation Agreement, Case A-836, dated today. That is to say, the practice in filling vacancies on engineers' pool board at Smithville will be the same as present practice at other district terminals on the railroad." * * * (M-K-T R. 31.)

This was accepted by the Firemen (M-K-T R. 32).

gineers' pool seems to be a clear infringement upon the right of the Engineers to regulate their own affairs. We conclude that the Engineers had the exclusive right to bargain with respect to the entry of men into engineers' service, and that these provisions of the Firemen's agreement with the carrier are invalid.

b. *The Second Paragraph.* Paragraph 2 of the Agreement of December 12, 1940 (M-K-T R. 27–31), deals with the manner of regulating the "working lists." As interpreted by the parties (M-K-T R. 149, 158, 286), it means that the management will regulate the lists, in consultation with the two brotherhoods. The prior practice had been for the Engineers to regulate the lists for engineers themselves.

By regulation of the working lists is meant the original assignment of a man to a list, the assignment of men on the lists to particular jobs, and also the transfer of men from one list to another. In so far as men working as engineers are concerned, the determination as to how these lists should be handled is the establishment of a rule for the governing of the craft of engineers. As such, it falls within the exclusive jurisdiction of the representative of the engineers' craft. We therefore conclude that the Firemen could not lawfully treat with the carrier on this subject in so far as engineers are concerned. The paragraph, on its face, would also seem to apply to the Firemen's working lists, and the Firemen, of

course, have the power to enter into such an arrangement on behalf of the craft which they represent. The paragraph is thus invalid only in so far as it is applied to engineers.

2. The Southern Pacific Case

a. *Article 43, Secs. 1, 2, 3, 4, and 6.*—The Engineers' complaint in the *Southern Pacific* case attacks the validity of Article 43, Sections 1, 2, 3, 4, and 6 and Addendum of the agreement entered into between the carrier and the Firemen on July 1, 1939 (S. P. R. 6–12). Section 6 of Article 43 clearly relates only to firemen and the Engineers seem to have abandoned any attack upon it.[34] The Engineers now also concede the validity of Section 1.[35] But since this section vitally affects those which follow, all must be read together.

Section 1 provides (S. P. R. 604):

> Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, *displace any fireman* their

[34] This section reads as follows (S. P. R. 608):

"In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers."

The Engineers' brief in the circuit court of appeals contains no argument as to the invalidity of this section.

[35] See Brief for the Appellant in the circuit court of appeals, p. 78.

junior on that seniority district *under the following conditions:*

First: That no reduction will be made so long as those in assigned or extra passenger service are earning the equivalent of 4,000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3,200 miles per month; on the road extra list are averaging the equivalent of 2,600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

Second: That when reductions are made they shall be in reverse order of seniority. [Italics supplied.]

This section states the terms upon which the Firemen will permit engineers to displace firemen. No displacements will be allowed so long as engineers are earning the equivalent of a specified number of miles per month. The effect of this rule is to impose a particular minimum mileage limitation upon the engineers, if they wish to exercise their valuable right to return to firing. The Engineers concede that the Firemen have the right to contract to this effect because the provisions as to engineers' mileage are expressed as a condition of the right to replace firemen.

Sections 2, 3 and 4 are not expressed in the language of condition, but all are included in the Agreement for the same reasons as are the conditions set forth in Section 1. The object of Section

1 is to require engineers to spread their work among themselves to a reasonable extent before exercising their privilege to displace firemen. The normal tendency of the engineers, so long as senior firemen's jobs are open to them, would be to concentrate engineers' work in as few hands as possible, thereby increasing the earning power of men working as engineers; the junior engineers would not suffer, since they would work steadily in the senior firemen's jobs. Men in firemen's service protect themselves against such a disposition of the engineers' work through the mileage limitation contained in Section 1.

Sections 3 and 4 obviously are correlative parts of the same scheme. Section 3 provides that "engineers taken off under the rule", and thereby working as firemen, "shall be returned to service as engineers" in order of seniority, when engineers' mileage has risen to a specified figure. In other words, as soon as there is more work available for engineers, the engineers working as firemen must return to engineers' service so that the firemen may resume their former positions.

Section 4 provides that engineer assignments shall be so regulated as to keep the mileage between the minimum prescribed in Section 1 and the maximum fixed in Section 3. It thus complements those sections.[36] It would seem to be some-

[36] Section 4 establishes maximum mileage limitations for services not covered in Section 3. Section 3 reaches only regular passenger and freight service. Sections 1 and 4 also apply to road and yard extra lists.

what broader than Section 3, since it does not relate solely to demoted engineers working as firemen. Nevertheless, its object is to establish maximum mileage limitations for engineers which will not bar the advancement of firemen up their own seniority lists and into engineers' service.

Section 2 is less important, since it deals only with the few remaining "hired engineers"—men who did not advance to engineers' service from the ranks of firemen.[37] The section provides merely that:

> When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required. (S. P. R. 604.)

This would seem to relate only to engineers; but the firemen have an interest in not letting such engineers retard the promotion of demoted engineers to engineers' service. Hence the proviso that hired engineers forfeit their rights unless they return to service within 30 days from the date their service is required.[38]

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[37] The Southern Pacific has not engaged engineers in this manner since 1920 and only a few hired engineers remain in its employ (S. P. R. 137).

[38] Hired engineers are also given seniority dates as firemen corresponding to their dates as engineers (S. P. R. 172, 283). Section 2 may also apply to the rights of hired engineers as firemen, and to that extent is undoubtedly lawfully within the Firemen's Agreement.

The question as to the validity of Sections 2, 3, and 4 presents the same issue. We think that the Firemen and the carrier could have made their consent to the reentry of engineers into firemen's service conditional upon the terms prescribed in those sections in the same manner as in Section 1. The agreement does not, however, use the language of condition as to those sections, unless the "following conditions" referred to in Section 1 include Sections 2, 3, and 4. Clearly they do not as a matter of grammatical construction. But both parties to the Agreement, the Firemen and the carrier, took the position in the courts below that they interpreted Sections 2, 3, and 4 as conditions upon the right of engineers to enter and continue in firemen's service. Both the district court and the circuit court of appeals held that the Agreement should be construed to mean what the parties to it intended it to mean; both courts accordingly concluded that all the sections (S. P. R. 52, 56, 818–819)—

> * * * were and are *intended* to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is *intended* to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or

minimum miles or hours. [Italics supplied.]

The circuit court of appeals explained that the effect of this construction would be merely to make clear that the "following conditions" referred to in Section 1 included Sections 2, 3, and 4, and ordered the "interpretation" quoted above inserted in the judgment declaring the rights of the parties (S. P. R. 818–819).

If Article 43 were not so interpreted, we would regard Sections 2, 3, and 4 as beyond the power of the Firemen and therefore unlawful. But we think that the Article, like other contractual provisions, should be interpreted, if possible, in a manner which will make it lawful, operative, and capable of being carried into effect.[39] When such a lawful interpretation coincides with the views of both parties,[40] a court may well depart to some extent from grammatical construction in order to reach the result that the parties intended.[41] Ac-

[39] Inasmuch as both state and federal courts give effect to the general rules that contracts are to be construed in accordance with the intent of the parties and so as to make the contract lawful and operative, it is not material which law applies to this question of contract interpretation. See p. 33, *supra*.

[40] We confess that we are baffled by the fact that the Firemen rather than the Engineers are now attacking the decision below on this point.

[41] Cf. *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *Lau Ow Bew* v. *United States*, 144 U. S. 47; *United States* v. *Kirby*, 7 Wall. 482; *United States* v. *American Trucking Assns.*, 310 U. S. 534, 543, and cases cited.

cordingly, we conclude that Sections 2, 3, and 4 should be interpreted as conditions upon the right of engineers to replace and continue as firemen, and that so construed they are valid.

b. *Addendum to Article 43.*—The Firemen's Agreement contains as an Addendum excerpts from a letter written by the Chairman of the National Mediation Board which sets forth an understanding agreed to by officials of the Engineers, the Firemen, and the carrier concerning the method of applying mileage limitations to men working part time as engineers and part time as firemen (S. P. R. 629–632). The formula set forth in this letter is "to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization" (S. P. R. 630). This would seem to be exactly what the law requires, inasmuch as it allows the Engineers to regulate the part-time men while they are working as engineers, and the Firemen while they are working as firemen. In addition, this letter constitutes the written expression of an agreement made between the Engineers, the Firemen, and the carrier (S. P. R. 167–168, 629–630). As long as the engineers' representative is a party to the agreement, the engineers cannot complain that it was not made with the authorized representative of their craft. Inasmuch as the representative of the engineers

could undoubtedly lawfully enter into such a tripartite agreement, the fact that the Firemen also signed it on behalf of the firemen's craft and then incorporated it in their general schedule does not make the Addendum unlawful.

c. *Article 37, Section 15, Questions and Answers.*—The Questions and Answers appended to Article 37, Section 15, of the Firemen's Agreement, prescribe the order in which firemen or demoted engineers may be called to service as engineers.[42] This covers substantially the same subject as the first paragraph of the agreement involved in the *M-K-T* case, and for the reasons set forth in our discussion of that paragraph (*supra*, p. 42), we would conclude that the Questions and Answers were also unlawful.

The carrier took the position in the court below, however, that when read in the light of the section to which they were appended, the Questions and Answers related exclusively to the individual's

[42] These Questions and Answers read as follows (S. P. R. 587):

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

"Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

"(b) The senior available man."

earnings as a fireman. The substantive portion of Section 15 provides that a fireman assigned to a regular run and called for other service will be paid no less than he would have received on his assigned run.[18] The purpose of the Questions and Answers is said to be to protect a senior fireman against evasion of the rule guaranteeing his earnings through the calling of a junior fireman who would not be entitled to more pay for his assigned run than for the emergency service (S. P. R. 169–172).

We find it difficult to see how the Questions and Answers, as now set forth, can be regarded as relating exclusively to earnings as firemen. If they could be so construed, they would be valid, since it is, of course, proper for the representative of the Firemen to enter into an agreement on that subject. The court below held that they were "valid only insofar as they relate to their rights of firemen as such under said section," but "invalid * * * insofar as they relate to entry of a fireman into the craft of engineers" (S. P. R. 826). This ruling safeguards the construction suggested by the carrier, and we believe that it should be affirmed.

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[18] The Section is quoted *supra*, p. 15. See also S. P. R. 587.

V

THE RAILWAY LABOR ACT DOES NOT GIVE THE MAJORITY REPRESENTATIVE THE EXCLUSIVE RIGHT TO PRESENT GRIEVANCES

Article 51 of the Firemen's agreement in the *Southern Pacific* case provides (S. P. R. 616):

> ARTICLE 51
>
> ADJUSTMENT OF DIFFERENCES
>
> SEC. 1. The right of any *engineer*, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. [Italics supplied.] "

The Engineers contend that the Firemen have no right to represent men working as engineers in the handling of grievances, and accordingly

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"An identical provision was contained in the Chicago Joint Agreement of 1913 between the Engineers and the Firemen, in all Firemen's agreements with the Southern Pacific since 1915, and in the Engineers' agreements with the Southern Pacific between 1915 and 1931. Article 32, Section 22, of the Engineers' agreement of January 9, 1931, now in effect, provides that "in matters pertaining to discipline, or other questions not affecting changes in Engineers' contract, the officials of the Company reserve the right to meet any of their employes either individually or collectively." See Plaintiffs' Exhibit 8, S. P. R. 660–663.

that the word "engineer" in the above Article should be declared unlawful. The Firemen and the carrier take the position that although the Engineers may be the exclusive representative of the craft of engineers for purposes of collective bargaining, the Act does not give to such a representative the exclusive right to represent all members of the craft in the handling of grievances.

The Act differentiates between disputes as to what shall be included in agreements and disputes as to the rights of individuals under agreements already made. The former are generally referred to as disputes relating to "rates of pay, rules, or working conditions,"[45] and the latter as disputes growing out of "grievances or the interpretation or application of agreements."[46] Disputes of the first class fall within the jurisdiction of the National Mediation Board and those of the second class within that of the National Railroad Adjustment Board. All parties concede as a general principle (with the qualifications considered in Point IV) that matters relating to the making and changing of agreements concerning rates of pay, rules and working conditions lie within the exclusive jurisdiction of the representative selected by the majority of the

[45] See Section 2, *General Purposes*, (4); Section 2, First; Section 2, Seventh; Section 5, First (a); Section 6.

[46] See Section 2, *General Purposes*, (5); Section 2, Sixth; Section 3, First (i).

craft. The question here to be decided is whether the same is true as to the handling of grievances and the interpretation and application of agreements.

The word grievance is, of course, broad enough to reach all types of disputes between a carrier and its employees, but it obviously is not so used in the Railway Labor Act. In general, the expressions "grievance" and disputes arising "out of the interpretation or application of agreements" are used interchangeably,[47] although the statute's use of

[47] The House Committee report on the Act (H. Rep. 1944, 73d Cong., 2d sess.) states (p. 2):

"The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances', which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions."

At the hearings before the House Committee on Interstate and Foreign Commerce (H. R. 7650, 73d Cong., 2d sess.), Mr. George M. Harrison, testifying on behalf of the Railway Labor Executives' Association, usually referred to the disputes falling within the jurisdiction of the Adjustment Board as "grievances" (p. 81); in his description of the type of cases coming within that classification, he stated (p. 80):

"The next general question covered by the act is that of establishing machinery to settle controversies that grow up between management and employees over the meaning or the allocation [application] of the contracts that have previously been made. Now, as a brief explanation of the character of those disputes, they might very well concern a man's seniority, whether or no his date is the proper date; might very well concern whether or no he has been paid the proper amount of compensation for a particular class of work performed, as the contract provides should be paid. It may very well concern the separation of an employee from the

both terms would indicate some difference in meaning. "Grievances" would appear to be the broader term, and, when used in Article 51, undoubtedly was intended to include cases arising out of the interpretation and application of agreements. In order to avoid repeating both expressions, we shall refer to all such cases hereafter as "grievances."

Although the Act differentiates between the handling of grievances and the negotiation of agreements, the disposition of grievances is often of great importance to the organization representing a craft as well as to the individuals involved. The agreement made between the majority organization and the employer can only be authoritatively interpreted by them, not by the employer and an individual employee or a minority representative. In recognition of this principle, Article 51 of the Firemen's Agreement expressly provides that all grievances be handled "under the recognized interpretation of the General Committee making the schedule." (See S. P. R. 265.) Questions as to the application of the agreement, to the extent that they can be distinguished from questions of interpretation, are also of concern to the representative since it

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service, whether or no he has been unjustly dismissed. It very well may concern the promotion of a man, whether he should have been accorded promotion, in accordance with his ability and his seniority in keeping with the rules of the contract; whether or no he was laid off in his seniority order; if he had not been taken back in his seniority order."

is essential that the agreement be uniformly applied to all members of the craft. And this is also true, although perhaps to a lesser degree, of questions of discipline and other matters not so closely related to the collective bargaining agreement.

Grievances, however, do differ from the making and general interpretation of the agreements, inasmuch as each case involves the rights of a particular individual or group of individuals in the craft, and the case is likely to be of especial importance to the person or persons concerned. Often, as in seniority disputes,[48] the interests of different members of a craft conflict. There are cases where the aggrieved individual is not in good standing with or eligible to membership in a majority organization, or is on bad personal terms with its officers.[49] And, as in this case, the aggrieved employee may be a member of a rival union. In such cases an employee might properly

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[48] *E. g.*, *Nord* v. *Griffin*, 86 F. (2d) 481 (C. C. A. 7), certiorari denied, 300 U. S. 673; *Ledford* v. *Chicago, M., St. P. & P. R. Co.*, 298 Ill. App. 298, 18 N. E. (2d) 568.

[49] Negroes are ineligible for membership in many of the railway labor organizations; it is frequently claimed that they are subject to discrimination by the majority representative. See the facts alleged in *Teague* v. *Brotherhood of Locomotive Firemen*, 127 F. (2d) 53 (C. C. A. 6) (dismissed on jurisdictional grounds). As to alleged discrimination against nonunion members, see the *Nord* and *Ledford* cases, *supra*, note 48. As to an employee not in good standing with the organization, see *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630.

feel that his interests were not receiving adequate protection if he was required to permit the majority organization to represent him.

We thus have a situation in which the majority representative has a legitimate concern that grievance cases shall not be so handled through another representative as to establish an interpretation unacceptable to it or interfere with the uniform application of the collective bargaining agreement and in which, on the other hand, it may often be unfair to compel employees to submit their grievances through the majority representative.

The question in this case is whether the Act itself prohibits an individual from being represented by anyone he chooses in grievance matters. As will appear, we believe that this question should be answered in the negative. This conclusion that the majority union does not have the *exclusive* right to represent members of the bargaining unit in the handling of grievances does not, however, mean that it has no interest or right to appear. The individual employee has the right to select the person to present and argue his case for him, but he has no right to prevent the representative of the majority from participating in any proceeding affecting the agreement to which it is a party. Indeed, in so far as the subject of a grievance is covered by the collective agreement, the majority organization would appear to be a necessary party to any negotiations involv-

ing its interpretation or application. The process of collective bargaining may be said to include not only "the creation of an agreement" but also "the enforcement and interpretation of the agreement throughout the months of its duration." Carroll R. Daugherty, *Labor Problems in American Industry* (Rev. ed., 1938), p. 450. It is upon this basis that we think the provisions of the Act may best be harmonized and its objects best achieved.

If Article 51 is construed, as it well can be, as permitting the carrier, when an individual engineer's case is being presented by the Fireman, also to consult with the Engineers whenever their agreement is affected, it would appear to be valid.

A. THE LANGUAGE OF THE ACT

The requirement that a carrier "treat with" the representative selected by the majority of a craft is derived in the first instance from Section 2, Paragraphs Fourth and Ninth. They provide—

> Fourth: Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *
>
> * * * * *
>
> Ninth: * * * Upon receipt of such certification the carrier shall treat with the

> representative so certified as the representative of the craft or class for the purposes of this Act. * * *

The first sentence of Paragraph Fourth, with its specific reference to the right to "bargain collectively," affords some support for the view that the function of the majority representative was to bargain, i. e., to negotiate and maintain contracts. But since both passages state that the representative selected shall be "the representative of the craft or class *for the purposes of this Act*," it is necessary to turn to other provisions of the Act for guidance.

The "purposes of the Act" are set forth at the beginning of Section 2 in a paragraph headed "General Purposes." This paragraph declares that the Act is designed (1) to avoid interruptions to commerce, (2) and (3) to prohibit employer interference with the employees' right of self-organization, (4) "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions," and (5) "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Since the settlement both of major disputes as to the terms of contracts and of minor disputes as to grievances are included in these purposes, it can be argued that the representa-

tive of the craft or class chosen "for the purposes of this Act" under Paragraphs Fourth and Ninth has equal authority over both subjects.

This interpretation is supported by Paragraphs Second and Sixth of Section 2. Paragraph Second provides that "*all* disputes * * * shall be considered, and, if possible, decided * * * in conference between representatives designated and authorized" by the parties "interested in the dispute." There is no differentiation between grievances and other matters in the requirement that there be conferences between authorized representatives. Section 2, Sixth, deals specifically with the procedure for the handling of grievances. It provides that in case of a dispute as to grievances "it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees * * * to specify a time and place at which such conference shall be held * * *."

Although these paragraphs support the Engineers' position, they are susceptible of a narrower construction. The paragraphs require that conferences be held between the carrier and the designated representative of the craft or class and that the disputes be decided in such conferences. They do not, however, state specifically that individuals who desire some one other than such representative to present their grievances to such a conference may not do so. An individual choosing a

different representative for this purpose would thus have his grievance submitted to the carrier and the craft representative jointly, with the latter acting on behalf of the craft generally. Such a procedure closely parallels that which the Act prescribes for the handling of grievances before the Adjustment Board; there the aggrieved employee may select anyone to represent him, but he submits his case to a joint board and not to the carrier alone. Only if Paragraphs Fourth and Sixth of Section 2 are so construed can they be reasonably reconciled with other provisions of the Act now to be discussed.

Section 3, First (i), states that "disputes between an *employee* or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes"; if the disputes are not adjusted in this manner, they may be referred by "either party" to the Adjustment Board. Paragraph (j) then provides—

> (j) Parties may be heard either *in person, by counsel, or by other representatives, as they may respectively elect,* and the several divisions of the Adjustment Board shall give due notice of all hearings *to the*

> *employee* or employees and the carrier or carriers involved in any disputes submitted to them. [Italics supplied.]

These two paragraphs plainly contemplate that a grievance case may be brought by a single employee or by a group and not necessarily by the representative of the entire craft. They also show that the employee or employees involved may be heard before the Adjustment Board through any representative they may elect.[50] We think that these provisions indicate that Congress did not place the handling of grievances within the exclu-

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[50] In support of this construction, see Hearings, House Committee on Interstate and Foreign Commerce, on Railway Labor Act Amendments (H. R. 7650, 73d Cong., 2d Sess.), p. 83 (testimony of George M. Harrison on behalf of the Railway Labor Executives Association); *Nord* v. *Griffin*, 86 F. (2d) 481 (C. C. A. 7), certiorari denied, 300 U. S. 673; *Estes* v. *Union Terminal Co.*, 89 F. (2d) 768 (C. C. A. 5); the opinion of the Ninth Circuit in the *Southern Pacific* case (S. P. R. 807–815); Spencer, *The National Railroad Adjustment Board* (University of Chicago Press, 1938), p. 39; (S. P. R. 295). The employee members of the Adjustment Board have, however, refused to permit the Board to hear cases not submitted by the organization representing the majority of a craft or class. Attorney General's Committee on Administrative Procedure, Monograph No. 17, *Railway Labor*, pp. 15–16. In at least three instances referees appointed to break such deadlocks have held that individuals have no standing before the Board. *Gooch* v. *Ogden Union Ry. Co.*, National Railroad Adjustment Board, Second Division, Award No. 514 (Referee McAllister); *Everly* v. *Erie R. Co.*, *id.*, Award No. 515 (Referee McAllister); *Rudd* v. *Minneapolis, etc., Ry. Co.*, National Railroad Adjustment Board, Third Division, Award No. 1718 (Referee Sharpe).

sive control of the majority representative. The granting by Congress to an employee of the right to choose any representative to act on his behalf before the Board in the later stages of the adjustment process is indicative of a similar intent in the preliminary negotiations with the carrier.

The provision in Paragraph (i) that the dispute should be handled "in the usual manner" also is pertinent. The testimony in the *Southern Pacific* case (S. P. R. 165, 205–208, 234–235) discloses that it was the customary practice on the Southern Pacific and railroads generally for a fireman or engineer involved in a grievance matter to select as his representative the organization of which he was a member, or anyone else he pleased, and not necessarily the organization representing the entire craft. It seems clear, in view of its approval of the "usual manner" of handling grievances that Congress intended to confirm rather than to destroy the established practice in this respect.

Another indication as to the congressional intention that employees be permitted to confer with management apart from the authorized representative of the craft is the proviso at the end of Section 2, Fourth—

> * * * That nothing in this Act shall be construed to prohibit a carrier from permitting *an employee, individually,* or local representatives of employees from conferring with management during working hours without loss of time, * * *. [Italics supplied.]

Although this does not state specifically that it applies to grievances, that would be a normal subject upon which employees and management would confer. And, of course, if the Act does not prohibit such conferences during working hours, it does not prohibit them altogether.

From this analysis of the Act, it would appear that Paragraphs Second and Sixth of Section 2, read in the light of the references to the purposes of the Act in Paragraphs Fourth and Ninth and the enumerated "General Purposes," indicate that the carrier was to confer with the majority representative on grievance matters, and that Section 3, First (i) and (j) and other portions of Paragraph Fourth of Section 2 suggest that the individual was not to be prohibited from selecting any representative he desired to present his case. We have suggested (*supra,* pp. 59–60, 62) that Paragraphs Second and Sixth may be construed as permitting individual representation in grievance matters without prejudice to the right of the majority representative also to be consulted by the carrier. It is upon this basis that we believe the various provisions of the Act most easily reconcilable. That this construction, though not compelled by the bare language of the Act, corresponds most closely with the intention of Congress is, we think, shown by the historical background of the majority rule provisions and their legislative history.

B. THE HISTORICAL AND LEGISLATIVE BACKGROUND OF THE MAJORITY RULE PROVISIONS SHOW THAT THE RIGHTS OF THE MAJORITY REPRESENTATIVE DO NOT EXTEND TO THE EXCLUSIVE HANDLING OF GRIEVANCES

Although the National War Labor Board created by President Wilson in 1918 gave governmental recognition to the doctrine of majority rule,[51] that principle was first explicitly defined by the Railroad Labor Board created by Title III of the Transportation Act of 1920.[52] In its Decision No. 119,[53] that Board ordered the carriers and employees to carry out the statutory mandate in Section 301 of the 1920 Act that they consider and decide all disputes "in conference between representatives designated and authorized by the parties" by conforming to a number of enumerated "principles." The fifteenth of these was as follows:

> 15. The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. *No such*

[51] National War Labor Board, *Principles and Rules of Procedure*, reprinted in United States Department of Labor Annual Report for 1919, p. 1273. See also United States Department of Labor, Bureau of Labor Statistics, Bull. No. 287, *National War Labor Board* (1912).

[52] 41 Stat. 469, Section 300, *et seq.*

[53] Decision No. 119, 2 Railroad Labor Board, pp. 87, 96.

> *agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.* [Italics supplied.]

This principle was applied by the Board in deciding specific cases,[54] and was found by the Court[55] to be lawful, as a reasonable means of insuring that conferences would be held by the representatives of the parties in the manner required by the Act. It is to be noted that Principle 15 specifically stated that the members of the craft (at least those not members of the majority organization) were not required to be represented by the majority representative in the handling of grievances.

The meaning of the doctrine of majority rule in this respect did not again come into question until 1934. In that year the labor boards established under the National Industrial Recovery Act (48 Stat. 195) were faced with the problem, and in the same year the amendments to the Railway Labor Act were prepared and enacted.

The question was presented to Federal Coordinator of Transportation Eastman, who explained to the congressional committees the bill

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[54] See Decisions Nos. 173, 174, 218, 220, *id.*, pp. 171, 173, 207, 216, and Decision No. 3117, 6 *id.*, p. 444.

[55] *Pennsylvania Railroad* v. *Railroad Labor Board*, 261 U. S. 72, 84–85.

which became the Railway Labor Act. In his testimony before the House Committee on Interstate and Foreign Commerce, he indicated that the Act was designed to conform to the old Railroad Labor Board Principle 15. He testified (Hearings before the House Committee on Interstate and Foreign Commerce on Railway Labor Act Amendments (H. R. 7650), 73d Cong., 2d Sess., p. 44):[56]

> * * * the point was raised as to whether or not the provision in the fourth paragraph of section 2 on page 6, beginning at line 7, to the effect that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act," would prevent an individual or a group of individuals, not belonging to the organization, from presenting their grievances directly to the management.
>
> I find that the old Railroad Labor Board, in laying down certain rules in regard to these matters, covered that point in the following language. I take this from the opinion of the Supreme Court in *Pennsylvania Federation* v. *Pennsylvania Railroad Company* (267 U. S. 203), in which this rule laid down by the board is quoted:
>
> "The majority of any craft or class shall have the right to determine what organization shall represent members of such craft

[56] See also p. 36.

or class. Such organization shall have the right to make an agreement which shall apply to all members in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organizations representing the majority, to present grievances either in person or by representatives of their own choice."

I think some such qualification should be contained in this act. In providing that the majority shall determine what shall be the representation, we are really dealing with the subject of collective bargaining. When it comes to collective bargaining in the matter of wages and working conditions, it seems to me plain that a company ought not be compelled to deal with more than one organization. It ought not to have to make bargains with two or three different organizations. But when it comes to the presentation of grievances, that is a different matter, and certainly an individual employee ought not be stopped in any way from taking his grievance up directly with the management, and I think that ought to apply to any other group of employees. However, with your permission, I should like to work out an amendment which will cover that point * * *.

The same interpretation was advocated by Mr. George M. Harrison, who testified in support of the bill on behalf of the Railway Labor Executives Association. Mr. Harrison proposed that a

clarifying amendment be added to the majority rule sentence in Section 2, Fourth—

> * * * *to make it clear* that the individual employee, or a group of individuals involved in grievances, are not prevented from having representatives to handle their grievances that are not representatives of the majority. (*Id.*, p. 89.) [Italics supplied.]

The amendment would have given the majority of the craft the right to determine representation only "for the purposes of making and revising agreements concerning rates of pay, rules, and working conditions."[57] Mr. Harrison then explained (*ibid.*):[58]

> Now, that makes it clear that the majority of any craft or class of employees shall have the right to designate who shall be the representative of the craft or class for the purpose of making and revising agreements concerning rates of pay, rules, and working conditions, and leaves the balance of the act in connection with grievances unimpaired, or at least, with no inference that it shall

[57] Although Railroad Labor Board Principle No. 15 only guaranteed the rights of employees not members of the majority organization to present grievances individually, the proposed amendment and the material discussed below contain no such limitation. Since it is generally only employees not members of the majority organization who desire separate representation on grievance matters, the distinction would appear to be of little practical significance.

[58] See also pp. 83–85.

> not apply just as it reads, where the individual may in person or by counsel of his own choosing or other representative, prosecute his grievances.

Nothing further appears as to the amendment which Mr. Eastman indicated he would work out on this point, or that which Mr. Harrison proposed. But Mr. Harrison's language itself shows that the amendment was intended to be clarifying. The House Committee Report (No. 1944, 73d Cong., 2d Sess.) states (p. 2) that election machinery is provided—

> * * * to determine what representatives the employees desire to have negotiate for them with managements of the carriers in *matters affecting their wages and working conditions.* [Italics supplied.]

In view of the absence of any opposition to the position taken by Mr. Harrison and Mr. Eastman, we think it more reasonable to infer that the amendment was regarded as unnecessary than that the failure to incorporate it in the statute was intended as a rejection of its policy.

As the record in the *Southern Pacific* case shows, both the National Mediation Board (S. P. R. 216–218) and an emergency board created to deal with a related problem on the Southern Pacific Railroad (S. P. R. 726, 736–737) have interpreted the Act as not giving the majority representative exclusive rights to represent members of the craft in the

handling of grievances.[59] In the matter of *Delaware, Lackawanna & Western R. Co.*, Nos. M–199 and R–358, decided August 13, 1937, the Mediation Board declared (p. 7):

> After the majority representatives made the agreement for the craft or class, individual employees were given the right to select their representatives for dealing with grievances arising under the agreements and such individual grievances were to [be] adjudicated by the National Railroad Adjustment Board, which was given the authority to interpret the agreements made and apply the interpretation to the individual grievances of employees.

The Act has also been so applied in practice by the firemen and the engineers throughout the country (S. P. R. 165, 205–208, 234–235). This administrative and practical interpretation of the law is entitled to weight.

These conclusions are reinforced by contemporaneous expressions of administrative and legislative opinion outside the railroad field. Section 7 (a) of the National Industrial Recovery Act,

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[59] The letter from the Mediation Board and the award of the Emergency Board both went so far as to hold that the Act *prohibited* a contract between the majority representative and the carrier giving the former exclusive representation rights in grievance matters. In this case it is not necessary to go that far, and the Mediation Board at present is in accord with the views expressed in the Attorney General's opinion of December 29, 1942. See page 80, *infra*.

adopted June 16, 1933, provided that every code of fair competition should recognize the right of employees to "bargain collectively through representatives of their own choosing" (48 Stat. 198). During the first year of the administration of that Act, there was considerable difference of opinion as to the rights which this provision gave the majority of a bargaining unit.[60]

In the spring of 1934 Senator Wagner introduced the forerunner of the National Labor Relations Act (S. 2926, 73d Cong., 2d Sess.). The bill, as reported out of the Senate Committee, contained a provision for majority rule when the Board so decided, with the proviso that "nothing in this Act shall be construed to prohibit an employer from discussing grievances with an employee or groups of employees at any time." (Sec. 10 (a)). The Senate Committee report (No. 1184, p. 8) stated in respect to this provision:

> Although the representatives of the majority may make the agreement for that unit, the minority have a right *through representatives or otherwise* to present grievances to their employer. [Italics supplied.]

[60] The principle of majority rule was apparently recognized by the National Labor Board but not by General Johnson and General Counsel Richberg of the National Industrial Recovery Administration. For a discussion of the problem during this period, see Lorwin and Wubnig, *Labor Relations Boards* (Brookings Institution, 1935), pp. 109–113, 268–272.

This report was submitted on May 26, 1934.[41]

The proposed bill was not passed. In its stead Congress enacted Public Resolution No. 44 (48 Stat. 1183) which authorized the President to establish boards to decide controversies under Section 7 (a). The resolution was approved by the President on June 19, 1934, two days before he approved the Railway Labor Act amendments. The text of the Resolution throws no light upon the problem; but on June 28, a week after he signed the Railway Labor Act, the President created the National Steel Labor Relations Board (Executive Order 6751). Section 3 of this Order authorized the Board to hold elections to determine representation, and then provided—

> * * * After each such election the Board shall certify the results to all concerned, and the person, persons, or organization certified as the choice of the majority of those voting shall be accepted as the representative or representatives of said employees for the purpose of collective bargaining, *without thereby denying to any individual employee or group of employees the right to present grievances,* to confer with their employers, *or otherwise to associate themselves and act for mutual aid or protection.* [Italics supplied.]

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[41] The committee reports on the Railway Labor Act (S. Rep. 1065, H. Rep. 1944, 73d Cong., 2d Sess.) were submitted on May 21 and June 11, 1934, respectively.

This Order would seem to have reserved to individuals and minorities the right to present grievances apart from the majority representative.[62]

The Order establishing the first National Labor Relations Board[63] issued on June 29, 1934, contained no such provision (Executive Order No. 6763). But in its leading decision on the question of majority rule, *In the Matter of Houde Engineering Corp.*, National Labor Relations Board Decisions, July 19, 1934–June 16, 1935, p. 35, decided August 30, 1934, the Labor Relations Board relied upon and quoted Principle 15 of the old Railway Labor Board (p. 41), and also referred to the Railway Labor Act Amendments passed shortly before (p. 43). Of even more significance, however, was its approval of the limitation upon the doctrine as set forth in the Executive Order creating the Steel Labor Board. The Board stated in this connection (*ibid.*):

> In concluding this opinion the Board wishes to indicate the limits beyond which it does not go. The rule here announced is to be applied, in the language of the

[62] Executive Order No. 6858, September 26, 1934, creating the Textile Labor Relations Board, contained identical language. See to the same effect the Order of the Administrator of the Petroleum Code, dated March 8, 1935, defining the functions of the Petroleum Labor Policy Board (printed in United States Department of the Interior, *Decisions of the Petroleum Labor Policy Board*, pp. ix–x).

[63] This Board was the predecessor to the present Board.

> Executive Order of June 28 just referred to, "without denying to any employee or groups of employees the right to present grievances, to confer with their employers, or to associate themselves and act for mutual aid or protection."

The same principles were applied by the Petroleum Labor Policy Board created by the Administrator of the Petroleum Code; its concluding report to the Petroleum Administrator stated:[64]

> * * * the principle was laid down that a majority of any craft or class of employees shall have the right to determine who shall be the representative of that class or craft for collective bargaining. While developing this principle, at the same time the Board has recognized the rights of individuals or groups to represent themselves or be represented by counsel or other representatives in cases of grievances or other matters not affecting the collective bargain for the whole class or craft of employees.

The clearly expressed views of legislators, of the President in the orders creating the industry labor boards, and of the Boards themselves would seem to manifest a general legislative and administrative understanding contemporaneous with the passage of

[64] See United States Department of the Interior, Petroleum Labor Policy Board, *Report to the Petroleum Administrator*, dated August 17, 1935 (mimeographed).

the Railway Labor Act amendments[55] that the right of the majority to select an exclusive representative for collective bargaining did not ex-

[55] The National Labor Relations Act was enacted July 5, 1935, a year later. 49 Stat. 449 (29 U. S. C., § 151). As originally introduced in both the House and Senate (H. R. 6288, S. 1958, 74th Cong., 1st Sess.), Section 9 (a), which defines the rights of the representative designated by the majority, contained a proviso that "any individual employee or group of employees shall have the right at any time to present grievances to their employer *through representatives of their own choosing.*" The italicized phrase was criticized by the chairman of the committee on the ground that it would permit the employer to "build up another company union" (Hearings, House Committee on Labor, 74th Cong., 1st Sess., H. R. 6288, p. 301), and was deleted from the bill as reported out of committee (S. 1958, draft of May 2, 1935) and as finally passed. See 79 Cong. Rec. 7651. The proviso as it now reads would seem only to permit individual employees or a group of employees to present grievances in person, but not through any other representative than that selected by the majority of the bargaining unit.

The majority rule provision of the National Labor Relations Act conforms of course with principles recognized by the present Labor Board's predecessors, as well as by the Railway Labor Act itself (H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 3, 20–22). On this particular point, however, it would appear that the deletion made by the committee resulted in a departure from the previous experience. Inasmuch as employer interference with the employees' choice of representatives was more widespread in the industries reached by the National Labor Relations Act than on the railroads, it was not inappropriate for Congress to make doubly sure in the Labor Relations Act that the grievance clause contained no loophole for employers to break down collective bargaining through majority representation, irrespective of the effect upon individual employees.

tend to the choice of representatives for the presentation of grievances. We think that in this environment exceedingly clear and unambiguous statutory language or legislative history would be necessary to show that the Congress which enacted the Railway Labor Act had an intention, with respect to the method of handling grievances, inconsistent with the climate of opinion expressed in the contemporaneous labor legislation and regulations. In view of the explanations given before the House Committee and the ambiguity of the Act's provisions, we do not think it can be said that the language of the Act compels that it be given any such inconsistent construction.

Although the right of individuals and minority groups to present grievances through whomsoever they choose was thus recognized, both the Act and the historic material we have outlined shows that collective bargaining was to be accomplished through the majority representative. The concept of collective bargaining includes the maintenance and operation, as well as the making, of agreements (see pp. 59–60, *supra*), and thus would seem to reach the determination of grievances as to involving the interpretation and application of the collective agreement. We do not read the various expressions as to the rights of individuals or groups to present grievances *through* whomever they select as incompatible with the submission of grievances affecting the entire craft *to* the employer and the craft rep-

resentative jointly.[66] With this limitation, we believe that the Act must be construed as not depriving individuals or minorities of their right to choose their representatives to present grievances. If Article 51 of the Firemen's Agreement is so interpreted, it would appear to be valid.

An additional word is called for because of a recent opinion of the Attorney General holding that the Railway Labor Act does not prohibit an agreement between a carrier and the representative selected by the majority of a craft under which the latter will have the exclusive right to act as representative of members of the craft in the handling of grievances.[67] Although the Act does not prohibit such an agreement,[68] it does not impose the requirement as a matter of law. The Act, in other

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[66] This does not mean that all grievances presented by individuals must be submitted to joint conferences of carrier and craft representatives. Any arrangement, formal or informal, whereby such representatives consult each other on the matter should be satisfactory.

[67] Op. A. G., Vol. 40, Opinion 59, dated December 29, 1942. The opinion states that an individual cannot be deprived of the right to present his grievances personally, but that he can be restricted to the use of the organization holding the agreement as his representative.

[68] The letter from the National Mediation Board set forth in the Record (S. P. R. 217–218), the decision of the Emergency Board (S. P. R. 726), and some language in the opinion of the circuit court of appeals in the *Southern Pacific* case (S. P. R. 801–815) express the view that the Act would invalidate such an agreement. Although aware of these pronouncements, the Attorney General was unable to agree with them.

words, leaves the parties where it finds them on this question. Since the agreement between the Engineers and the carrier in this case contains no such provision, the case presents only the issue whether the Act itself gives the majority representative the exclusive right to handle grievances. For the reasons previously set forth, we believe that it does not.

CONCLUSION

It is respectfully submitted that the judgment in the *M-K-T* case (No. 23) should be reversed, and that the judgment in the *Southern Pacific* case (Nos. 27 and 41) should be affirmed.

CHARLES FAHY,
Solicitor General.

ROBERT L. STERN,
Attorney.

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APPENDIX

THE RAILWAY LABOR ACT

Being An Act To provide for the prompt disposition of disputes between carriers and their employees and for other purposes

(U. S. Code, Title 45, Chapter 8)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I[1]

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

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[1] (Public, No. 257, 69th Cong.) (H. R. 9463); (Approved May 20, 1926). The Railway Labor Act (44 Stat. L. 577).
(Public, No. 442, 73rd Cong.) (H. R. 9861). An Act to amend the Railway Labor Act approved May 20, 1926. (Approved June 21, 1934.)
That Section 1 of the Railway Labor Act is amended to read as follows: (Followed by text governing carriers by railroad and related transportation agencies.). (48 Stat. L. 926.)

[2] Title II. (Public, No. 487, 74th Cong.) (S. 2496). An Act to amend the Railway Labor Act. (Approved Apr. 10, 1936.)
That the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as "Title I" is hereby further amended by inserting after the enacting clause the caption "Title I" and by adding the following Title II. (Followed by Title II governing air carriers.) (48 Stat. L. 1185.)

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State of any Territory or the District of Columbia, or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

SEC. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to

commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contracts has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on

the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon

conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent; nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

SEC. 3. Section 3 of the Railway Labor Act is amended to read as follows:

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.